IOWA FINANCE AUTHORITY

LOW INCOME HOUSING TAX CREDIT PROGRAM

COMPLIANCE MONITORING MANUAL

Includes all updates through January 3, 2001

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PREFACE

The Compliance Monitoring Manual is a training and reference guide for the compliance monitoring of the Low-Income Housing Tax Credit Program (LIHTC or the Program). The Manual is designed to provide guidance for compliance with the Land Use Restriction Covenant (LURA) and Section 42 of the Internal Revenue Code of 1986 as amended and the State of Iowa's (Qualified Allocation Plan – QAP) and, generally, to help answer questions regarding the procedures, rules, and regulations that govern LIHTC developments. The Manual should be a useful resource for owners and developers, management companies, and on-site management personnel.

It is important to note this manual is to be used as a supplement to existing laws and rules. It is by no means a comprehensive guide to the LIHTC program and all of requirements. This manual was produced for utilization by LIHTC participants in Iowa and should be used in conjunction with the Internal Revenue Code and the LURA, if applicable. Owners and managers should consider retaining the services of an attorney and/or accountant who specializes in the LIHTC program to counsel them on the complex problems that may arise. The Iowa Finance Authority's obligation to monitor for compliance with the requirements of the IRS Code does not make the IFA liable for an owner's noncompliance (Treas. Reg. 1.42-(5)(g) effective 6/30/93.

The IFA shall be under no obligation to undertake an investigation of the accuracy of the information submitted for compliance monitoring. The IFA's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability, and risk of the development. If any information submitted by building owners to the IFA is later found to be incorrect in any material respect, it is the responsibility of the building owners to inform the IFA and to request a reexamination of the information. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.

This manual has not been reviewed or approved by the Internal Revenue Service (IRS) and should not be relied upon for interpretation of federal income tax legislation or regulations.

Compliance monitoring by the Iowa Finance Authority (IFA) will be administered through the Compliance Division. The IFA LIHTC Compliance Monitoring Program Staff may be reached at (515) 242-4990 or toll free at 1-800-432-7230.

INTRODUCTION

Established in 1975 as a public instrumentality and agency of the State of Iowa, the Iowa Finance Authority is the state of Iowa's housing finance agency and is the housing credit agency for the purpose of IRS Section 42. As of June 30, 1999 the Tax Credit Program has created approximately 11,689 units of affordable housing in Iowa. While the IFA's primary mission is to provide affordable housing for residents of Iowa, through its programs including the Single Family Mortgage Loan Program which has enabled 16,252 Iowa families and individuals to become first time home buyers, the IFA also assists in the creation of jobs and economic opportunities in Iowa communities through the issuance of tax-exempt bonds to provide attractive rates of loan financing to manufacturing firms, nursing homes, hospitals and multifamily rental housing. Over $1.9 billion in tax-exempt financing has been issued to date for these purposes.

BACKGROUND

Congress enacted the Low-Income Housing Tax Credit Program which is authorized and governed by Section 252 of the Tax Reform Act of 1986. The Treasury Department is responsible for the administration of the Program nationwide. The Program is governed by Section 42 of the Internal Revenue Code, as amended, and the regulations, thereunder, (the Code). Under the provisions of the Code, each state is required to designate a "housing credit agency" to allocate the credits. The State of Iowa has designated the IFA to allocate tax credits within the State of Iowa.

The Low-Income Housing Tax Credit (LIHTC) is a dollar-for-dollar reduction in tax liability to the investors of a qualified low-income housing development for the acquisition, rehabilitation, or construction of low-income rental housing units. The amount of credit allocated is directly based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that state tax credit allocating agencies provide a procedure for monitoring developments for non-compliance with the requirements of the Program under Section 42(m)(1)(B) of the Code and for notifying the Internal Revenue Service of such non-compliance.

An allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any non-compliance of which the IFA becomes aware, whether or not it is corrected. The **monitoring requirements** became effective on January 1, 1992, and **apply to all tax credit developments, even if the developments received an allocation prior to 1992.** The IFA, as the allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring. The IRS has issued final regulations, Income Tax Regulation 1.42-5("1.42-5"), relating to the requirements for compliance monitoring.

This manual includes a number of chapters designed to cover the specific compliance monitoring requirements under Section 42. Chapter 1 gives a summary of program requirements and regulations. Chapter 2 sets forth the monitoring agency and the owner responsibilities. Chapter 3 summarizes the owner's record keeping and retention requirements, the procedures to be followed at the time a tax credit development is sold or otherwise transferred, and consequences of noncompliance. Chapter 4 covers the procedures for determining tenant income and eligibility. Chapter 5 discusses income determinations. Chapter 6 provides guidelines for the correction of non-compliance. Chapter 7 discusses other considerations affecting the administration of the LIHTC program in Iowa.

This manual is intended to be an information document that generally outlines the broad elements of the legal and regulatory framework of federal tax law. This manual does NOT offer formal legal opinions on the matters discussed. Specific questions about particular matters or projects must be addressed in the precise and legal and factual contexts in which they arise, and should be addressed by each party's own tax professionals. The IFA makes no warranty or representation, either expressed or implied, with respect to the accuracy, completeness, or utility of information contained in the manual; and there is no assumption of liability of any kind whatsoever resulting from the use of or reliance upon any information, procedure, conclusion or opinion contained in the manual.

In the end, the risks and cost of noncompliance fall squarely on project owners and investors, and therefore responsibility for compliance with the Code's requirements must rest with them and their professionals. The advice in this manual is only guidance. Each owner must assure itself that its own practices respond to the latest legal requirements and interpretations, and that its staff is trained properly to implement the appropriate procedures.

Monitoring fees will be determined annually. Specific amounts will be stated annually in the Qualified Allocation Plan (QAP). (The entire amount is due in one lump sum when the building(s) is placed in service).

Owners should be aware that section 1.42-5 explicitly provides that the credit agency monitoring procedures only address the requirements for housing credit agency monitoring and do not address forms and other records that may be required by the IRS on examination or audit.

Tax Exempt Bond Developments

Some tax credit developments receive their allocation of credits through the use of tax-exempt bonds. The IFA will monitor all developments receiving allocation through the issuance of tax exempt bonds. Tax exempt bond developments monitored by the IFA must comply with the specific requirements in Internal Revenue Code Section 42 and 142 as applicable.

Chapter 1

Low Income Housing Tax Credit Program Fundamentals

Section 1.1 Regulations for Various Tax Credit Periods

IRS regulations differ depending on when a development was allocated credit. In some cases, the change in regulations brought forth by a technical correction is minor; in others, it is substantial. Management must not only be aware of the differences in regulations but must also clearly understand which rule governs each particular building and/or development. Currently, there are four specific tax credit regulation periods as follows:

1. **January 1, 1987 – December 31, 1989.**

    - For buildings allocated credit during this period, rent was (is) based on the number of people living in the unit, and was (is) subject to change as family composition changes. Owners of these developments, however, had a one-time opportunity to opt to change to the methodology used by sending a letter to the Internal Revenue Service requesting a conversion. Verification of the option chosen must be provided to the IFA.

2. **January 1, 1990 and beyond. Note:** This does not necessarily mean developments placed in service in 1990. It is the credit year that is determinative.

    - Rent for all buildings allocated after January 1, 1990 is based on the number of bedrooms in a particular unit.
    - The compliance period is increased to 30 years.

3. **1991 and January 1, 1992 – June 30, 1992.**

    - The Farmers Home Administration Overage Rule and an extension on initial compliance (not retroactive) were implemented.

4. **July 1, 1992 and/or August 10, 1993.**

    - Section 8 voucher (cannot refuse to lease to Section 8 tenants) – retroactive.
    - Two student rule changes were implemented.
    - 1987-1989 developments can convert rental rates from number of persons to number of bedrooms.

Section 1.2 Regulations

Program requirements are contained in section 42 of the Code which is attached as Appendix A. Program changes and revisions made by the Budget Reconciliation Acts of 1989, 1990, and 1993 are incorporated within the Code. Additionally, the IRS publishes periodic revenue notices, rulings, regulations, and procedures that clarify and/or expand on the law, some of which are provided in the Appendix section of this manual.

The following section highlights some of the statutory and regulatory provisions directly affecting development compliance. The following is not meant as an exhaustive listing of compliance regulations.

Section 1.3 Development Regulations

A. Minimum Set-Aside Election

Qualifying developments must meet rental and income targeting requirements for a minimum 15-year period and the possible extended periods as elected. The owner must make one of the following two minimum set-aside elections on a project basis during the application process for housing tax credits:

i. At least 20% of the rental units must be rented to households whose incomes are 50% or less of the area median income adjusted for family size; **or**
ii. At least 40% of the rental units must be rented to households whose incomes are 60% or less of the area median income adjusted for family size.

B. Special Set-Asides

An owner or developer may receive extra points in scoring on the IFA's tax credit application for setting aside units for lower income (less than 50% or 60% of area median income) households. This applies to low-income units only. The requirements necessary to obtain the extra points are **in addition** to the federal regulations. The IFA will enforce compliance with these requirements through one or all of the following:

- cancellation of tax credits if IRS Form 8609 has not yet been issued;
- notification to the IRS of noncompliance with agency requirements;
- legal enforcement of the owner's obligations under contract documents and Land Use Restrictive Covenants;
- consideration of noncompliance in future applications for tax credits by the owner, developer, or related party.

Both minimum and special set-aside elections will be reflected in the allocation documents, which include the Carryover Agreement, and Land Use Restrictive Covenants (LURA). **All set asides will be monitored for compliance**.

Rental agents or managers should confirm the set-aside that was designated by the owner at the time the set-aside option was made (the election is made on the form 8609 for the first year of the credit period), to ensure continued compliance. **Once selected, the option cannot be changed.**

Section 1.4 Building Regulations

A. Eligible Basis

The eligible basis is assigned to a building at the time of final credit allocation (issuance of 8609). The eligible basis is composed of allowable cost elements subject to depreciation. (Many special rules apply in determining the eligible basis that are not detailed herein.) Although the owner apportions the amount of eligible basis for each building, the total development eligible basis will be limited by the total amount of credit that the IFA actually allocated to the development. In calculating the credit amount for each building, the IFA may adjust the owner's eligible basis apportionment per building to not exceed the maximum credit amount allocated to the development.

Some of the special provisions for determining eligible basis under Section 42(d) are:

- The eligible basis is increased for new buildings and substantial rehabilitation to existing buildings which are located in designated qualified census tracts and difficult development areas;

- If non-housing tax credit units are of a quality standard greater than that of housing tax credit units in the building, the costs of non-housing tax credit units generally are not included in eligible basis;
- The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g. carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g. parking, garages, and swimming pools) may be included in eligible basis **if there is no separate charge for use of the facilities, and they are made available on a comparable basis to all tenants in the developments;**
- Eligible Basis is reduced by federal grants, residential rental units that are above the average quality standard of the low-income units, any historic rehabilitation credits, and nonresidential rental property. Buildings located in an area designed as a "qualified census tract" or "difficult development area" may be eligible for an increase in allowable basis;
- The eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the form 8609 and does not change from year to year;

> **Note: Manipulation of the maximum qualified basis by artificially raising the eligible basis and lowering the applicable fraction violates Section 42 and the contracts between the IFA and the owner. If the IFA determines that such manipulation has occurred, it may cancel credits if IRS Form 8609 has not yet been issued. Additionally, the IFA will report the action to the IRS as noncompliance.**

B. Applicable Fraction:

The applicable fraction represents the percentage of a building intended for qualified low-income units.

The targeted applicable fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609) by the owner. However, a final determination of the maximum applicable fraction is made on the last day of a building's initial tax credit year. The maximum credit an owner may claim on a building is based on the lesser of the targeted applicable fraction or the actual applicable fraction on the last day of the initial tax credit year. (See IRS Form 8609-Schedule A located in Appendix A for complete instructions on calculating the building's first year applicable fraction.)

The applicable fraction is calculated (I.R.C. §42 (c)(1)(B)(1994)) as the lessor of:

1. The number of housing tax credit units in a building divided by the total number of residential rental units (whether or not occupied); **or**

2. The total square footage of the housing tax credit units in the building divided by the total square footage of all residential rental units in the building (whether or not occupied), with the exception of the manager's unit, which may or may not be included, depending on the circumstances, as explained later in this section.

When determining which units to include as low-income units in the numerator (low-income units), and total units in the denominator of the fraction, please note:

- Units that have never been occupied may not be included in the numerator (low-income units), but must be included in the denominator (total units);
- Units that are vacant at the end of the initial tax year which previously were qualified as low-income units may be considered to be low-income for determining the amount of credits claimed only if the units were occupied for a **minimum of one month (30 days) (**I.R.C. §42(f)(2)(A)(i)(1994)) and occupied before November 30 of that year;
- If a qualified low-income tenant becomes an ineligible tenant prior to the end of the initial tax credit year, that unit may not be counted in the first year toward the minimum set-aside or the determination of the qualified basis, unless the unit is vacated and re-qualified by the end of the initial tax credit year.

Manager's Unit

A **full-time** resident manager's unit may be considered in one of two ways listed below:

a) For buildings placed in service after September 9, 1992, the manager's unit may be considered as **common area** or other special facility within a rental development that supports and/or is reserved for the benefit of all the rental units. Under this interpretation, the unit is excluded from the low-income occupancy calculation; and the unit may be used by the manager without concern for the effective rent charged to or the income level of the manager. If this option is elected, the unit occupied by the resident manager is included in the building's eligible basis; but excluded from the applicable fraction for the purposes of determining the building's qualified basis;

b) For buildings placed in service prior to September 9, 1992, the manager's unit may be treated as follows:

1. The manager's unit is considered a qualified low-income unit. The rent is restricted, and the resident manager's household income does not exceed the applicable income limit. The unit is included in the applicable fraction in determining the building's qualified basis.

2. The manager's unit is considered common space. The unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis.

Examples:

If the development contains 24 units, and the applicable fraction is 100%; and credit was allocated on 23 units, this means that the manager's unit was treated as common space when the credit was allocated;

If the development contains 24 units; and credit was allocated on 23 units; and the applicable fraction is less than 100%, this means that the manager's unit is considered to be a market rate unit. The manager does not have to be certified low-income tenant.

The owner must make a designation of the unit as common space or as a low-income residential unit. All developments, especially those that are new allocations, must notify the IFA of the status of the full time resident manager's unit and which method is being used. When notifying the IFA, it is necessary to include the development name and LIHTC number, the building address and BIN number, the unit number, the number of bedrooms in the unit, the square footage and the current resident manager's name.

As long as the number of previously approved management units are not increased, the owner shall be permitted to move the manager's unit within the project as long as the change is reported on the annual compliance report. If the owner feels the project needs two manager units, but was only approved for one, then the owner will need to get IFA's approval.

The provision for the inclusion of a manager's unit as common area may not be available for certain developments (particularly many developments that received an allocation of credit prior to September 9, 1992). For more information regarding the manager's unit, see IRS Revenue Ruling 92-61, which is included in Appendix A of this manual.

C. Qualified Basis

The qualified basis is used to determine the amount of tax credit allowed per building in the development. The qualified basis of a building is determined by multiplying it's eligible basis by it's applicable fraction. The annual tax credit amount is computed by multiplying a building's qualified basis by the applicable tax credit percentage (approximately 4% or 9%) for that building.

Both the eligible basis and the applicable fraction are determined as of the last day of the initial tax year for which the tax credit is claimed.

Tax credits may be claimed annually by the owner of the development for a period of 10 years. At the option of the owner, the initial year in which the tax credits are claimed is either the year in which the building is placed in service, or the year following the year in which the building is placed in service.

Increasing the Qualified Basis in Subsequent Years

If an owner is unable to obtain the desired applicable fraction and qualified basis in the first year of the credit period, the qualified basis of a building may be increased in subsequent years. The owner may claim an additional credit equal to two-thirds of what it would first have been eligible to claim during the remainder of the compliance period, as long as the amount of credit taken does not exceed the amount allocated by the allocating agency. This should not be confused with the first year election described above and is applicable only for increases that occur after the first year of the credit period.

The owner should notify the IFA when a building has increased its qualified basis, and the owner is claiming additional credit.

Decreasing the Qualified Basis

If at the close of a year, the qualified basis of a building has decreased (due to a decreased applicable fraction) from the close of the previous year, the credit for the building may be subject to recapture. See IRS Form 8611 in Appendix A.

D. Claiming Credits

The credits may be taken annually for 10 years and are based on a percentage of the qualified costs of the building. For 1987, the applicable rates were 9 percent for new construction and substantial rehabilitation and 4 percent for buildings with federal subsidies and for acquisition and rehabilitation of existing buildings. (In order for an existing building to qualify for the credit in connection with substantial rehabilitation, there must be a period of at least 10 years between the date of acquisition and the date the building was last placed in service.)

After 1987, the credit percentage is adjusted accordingly to a calculation based on the Applicable Federal Rate (AFR) for the month the development is placed in service, or the month a carryover/commitment is entered into by the owner and the IFA.

Owners of qualified residential rental developments must satisfy the minimum set aside gross rent requirements for a minimum 15-year period, and in many cases, a 30-year period, depending on the deed restrictions. Generally, any change in ownership or failure to meet the rental requirements will trigger recapture of the credits.

E. The Annual Tax Credit Amount

The maximum amount of credit that may be allocated is calculated by multiplying the "eligible basis" by an "applicable fraction" to ascertain the "qualified basis" and then multiplying by the "applicable credit percentage."

QUALIFIED BASIS = Eligible Basis X Applicable Project Fraction

ANNUAL TAX CREDIT = Qualified Basis X Applicable Credit Percentage

The annual credit allocated may not exceed this amount; however, it may be less if the IFA determines that this maximum amount is not necessary.

F. Housing Credits - Claiming Tax Credits in the Initial Year

The credit is claimed annually for ten years and the credit period may begin in the year that the building is placed in service. During the first year of the credit period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first month in which the development was placed in service (or the following year if there is an election to defer the credit period) even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving tax credits and is filed with the taxpayer's return for the first year of the credit period. Owners may elect to defer the date of the credit period by checking the appropriate box on the IRS Form 8609. A sample copy of this form and its instructions are located in Appendix A.

G. Initial Year Pro-ration

A development claiming credit in the initial year of occupancy is subject to a special provision, which limits the credit to a proportionate amount based on average occupancy during the year.

For example*:*

If one-half of the low-income units were occupied in November; and the remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 (12.5% - all for December and half for November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.

H. Calculating the First Year Applicable Fraction

There are specific rules for the first year credit period. The following is an **example**:

Assume that a low-income building has the following lease-up schedule during the first year of the credit period. To determine the applicable fraction for the first year, an average of all monthly applicable fractions must be used. This is done by dividing the sum of each applicable fraction by twelve (per instructions on IRS Form 8609 and Schedule A)

Month	**Low-Income Units**	**Total Units**	**Percent Divided by 12**	**Actual Monthly Percentage**
January	0	10	0% / 12	0.00%
February	2	10	20% / 12	1.67%
March	4	10	40% / 12	3.33%
April	6	10	60% / 12	5.00%
May	7	10	70% / 12	5.83%
June	7	10	70% / 12	5.83%
July	7	10	70% / 12	5.83%
August	8	10	80% / 12	6.67%
September	9	10	90% / 12	7.5%
October	10	10	100% / 12	8.33%
November	10	10	100% / 12	8.33%
December	10	10	100% / 12	8.33%
Total First Year Applicable Fraction:				**66.65%**

The first year applicable fraction for this building would be 66.65% based on this lease-up schedule.

I. The Two-Thirds Rule

If an owner decides to take the tax credit for a property in the initial year when, for example, only 80% of the units are rented to tax credit eligible tenants, the maximum qualified basis for the entire credit period would be 80% with the remaining 20% eligible for two-thirds credit if later rented to eligible tenants.

J. Claiming Credit in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low Income Housing Credit) with the Internal Revenue Service for every year of the compliance period. This form indicates continuing compliance and the qualified basis of the development for each year of the compliance period. A sample copy of this form is located in Appendix A.

The applicable fraction must be met on a building by building basis consistent with Treasury Regulation 1-42-5 (c)(vii). Any reduction in the applicable fraction of a building (and thus its qualified basis) is potential noncompliance and will be reported to the IRS. Different buildings within a development may sometimes have different applicable fractions.

Section 1.5 Unit Regulations for Determining Eligibility

A. Maximum Income Limits

In order for persons to qualify as households for low-income units in a section 42 development, their income must first be certified to not exceed the county income limit for that development, depending on which minimum set-aside the owner selected.

Income limits for qualifying households depend on which minimum low-income set-aside election the owner chose and in what county the development is located. Qualifying tenants in developments operating under the "20/50" election may not have total household incomes that exceed 50% of the appropriate county median income (CMI) adjusted for family size. Qualifying tenants in developments operating under the "40/60" election may not have total household incomes that exceed 60% of the appropriate CMI adjusted for family size.

The U.S. Department of Housing and Urban Development (HUD) annually publishes median income figures for all Iowa counties. The IFA uses these figures to calculate the maximum allowable rents and tenant incomes for rental units receiving the tax credit. The IFA publishes income and rent limits, based on area median income, for developments receiving a LIHTC allocation and sends out the updated limits as they become available. However, it is the owner's responsibility to obtain the new limits each year. Owners should not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD.

Refer to Chapter 4 for instructions on how to calculate household income.

Rent Restrictions and Lease Requirements

The LIHTC program sets only a maximum allowable qualifying income. The LIHTC program does not set minimum requirements. An owner/manager may elect to set a minimum income for prospective and current tenants. However, such a requirement may not be applied to prospective or current tenants who participate in the Section 8 Program(s).

B. Maximum Rent Limits

Similar to restrictions on tenant income, restrictions also exist on the amount of rent that may be charged for a low-income unit.

Developments Allocated Credit During the Years 1987 to 1989:

- For developments allocated 1987, 1988, or 1989 credit, the tenant's gross rent may not exceed 30% of the applicable median income (that is, either 50% or 60%, depending on which income set-aside has been chosen) adjusted for family size for the area in which the development is located. The gross rent must include an allowance for utilities, except those that are paid for by the development.

Example:

To calculate pre 1990 rents based on a family size of four:

The 1999 Adair County median income limit for a family of four = $25,260.00.

Maximum Allowable Rent for a Low-income unit by household size:

($631.00/12 months) x .30 = $227.16

$227.16 is rounded down to $227.00

This represents the maximum gross rent that may be charged an income eligible family of four living in Adair County in Iowa with an income of no more that $25,260.00 per year.

All rent calculations for pre-1990 rents should be rounded down to an even dollar amount.

Exception: Maximum Rent Election

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 was signed into law. This allowed owners of developments receiving allocation(s) of credit prior to December 31, 1989, to elect to make the change from maximum rents based on family size to maximum rents based on number of bedrooms. The deadline for the one-time election was February 7, 1994. It was necessary to file the election with the IRS and the IFA at that time. The election, once made, applies to all low-income units in a tax credit building and is irrevocable. The election to change the rent calculation method applies only to new residents moving into a building after the election is made.

Developments Allocated Credit After January 1, 1990

Developments receiving tax credit allocations after January 1, 1990 must be rent-restricted based on an imputed, not actual, family size. Family size is imputed by number of bedrooms in the following manner:

- An efficiency or a unit which does not have a separate bedroom – 1 individual.
- A unit which has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable median income for the imputed household size (notwithstanding that the actual household size may be different).

For Example:

Income Limits (by household size)
Examples only – owner must use income limits specific to county in which development is located.

One Person	Two Person	Three Person	Four Person
$10,000	$15,000	$20,000	$25,000

The rent for a two-bedroom is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size [($20,000 x 30%) divided by 12 months equals $500]. The $500 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying the two-bedroom unit.

Any building receiving a **pre-1990** allocation of credit **and** an additional allocation of credit after December 31, 1989 must calculate rents both ways and charge the lesser of:

- rent based on actual family size, or;
- rent based on 1.5 persons per bedroom.

Gross rent must include an allowance for any utilities paid by the tenant. Utility allowances must be determined according to program requirements set forth in 26 C.F.R. §1.42-10 (April 1, 1994), located in Appendix A of this manual.

Section 8 Rent

Gross rent does not include any 3^{d} party payments made to the owner to subsidize the tenants' rent, including Section 8 or any comparable rental assistance program to a unit or its occupants. Only the tenant-paid portion of the rent payment (inclusive of tenant-paid utilities) is considered in determining if the rent exceeds the maximum gross rent permissible.

For example:

The maximum allowable gross rent for a unit is $300. A particular tenant is paying $172, the unit has a utility allowance of $28 and the owner receives a $175 Section 8 subsidy for this unit. The rent meets tax credit guidelines because the tenant-paid portion of the rent plus the utility allowance ($172 + $28 = $200) is not more than $300.

An increase in the rent paid by a Section 8 or Rural Development (RD), formerly Farmer's Home Administration (FMHA), Section 515 tenant to an amount that is greater than the maximum tax credit rent may not disqualify the unit for tax credits if the rent increase is mandated under the provisions of the Section 8 Program or the Section 515 Rental Assistance or Interest Credit programs.

Such a rent increase may occur if a tenant's income increases significantly, since tenants under these HUD and RD/FMHA programs are required by statute to pay rents equal to 30 percent of their adjusted monthly incomes. The amount of rent paid by the tenant in excess of the tax credit rent limit is known as the "rent overage". The rent overage is treated as follows:

<u>For Section 8 Project-Based Developments</u>

The increase in the tenant's rent payment is allowed if the section 8 subsidy is reduced by the rent overage.

For FMHA 515 Developments

- For FMHA 515 developments built before 1991, the rent overage may not be charged to the tenant, and the owner is responsible for paying the difference.
- For developments built in 1991 and later, the rent amount exceeding the tax credit rent limit may be collected by the owner, but the owner must pay the overage to Rural Development.

C. Gross Rent Floor

IRS Revenue Procedure 94-57 (Appendix A) allows the owner to establish the effective date of initial maximum rents which serve as a floor against subsequent reductions in rent that may result from a decrease in an area median income. The Procedure allows the owner/taxpayer to fix the date of the gross rent floor as either the placed-in-service date or the credit allocation (carryover) date.

For all developments receiving allocations of credit after October 6, 1994, a statement of election must be completed and returned to the IFA before the placed-in-service date unless the allocation (carryover) date precedes the placed-in-service date. The gross rent floor determination allows the Taxpayer either election.

For tax-exempt Projects, the Gross Rent Floor will be the date that the Agency initially issues a determination letter for the building unless the taxpayer requests to use the placed-in-service date.

The effective date of the gross rent floor for buildings receiving an initial allocation of credit prior to October 6, 1994, is any date which the owner and the IFA determine is a reasonable interpretation of the statute. Either the date of allocation of credit or the building's placed-in-service date would be considered reasonable interpretation in establishing the gross rent floor.

Please refer to Appendix A, IRS Ruling 94-57 (Gross Rent Floor) for an explanation on how the rent floor is established for developments financed by tax-exempt bonds.

If a rent amount that is greater than the maximum allowable LIHTC rent is charged to a tenant, management may either rebate the difference between the basic rent and LIHTC rent to the tenant or discount that amount in the current lease.

D. Utility Allowance

The maximum gross rent includes the amount of tenant paid utilities. Utilities include electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone or cable television.

When utilities are paid directly by the tenant (as opposed to being paid by the development), a utility allowance must be used to determine maximum eligible unit rent. The utility allowance (for utility costs paid by the tenant) must be subtracted from the maximum gross rent to determine the maximum amount of allowable tenant-paid rent.

For example:

If the maximum gross rent on a unit is $350; and the tenant pays utilities with a utility allowance of $66 per month, the maximum rent chargeable to the tenant is $284 ($350 minus $66).

If all utilities are included in the household's gross rent payment, no utility allowance is required.

The IRS requires that utility allowances be set according to IRS Notice 89-6, included in Appendix A. IRS Notice 89-6 lists the different sources of utility allowances for tax credit developments, which include the following:

- RHS-Financed Development – Use RHS utility allowances;
- HUD Project Based Subsidy Regulated Buildings – use HUD approved utility allowances;
- Individual Apartments Occupied by Residents who Receive HUD Assistance (Section 8 Existing, etc.) Use the HUD utility allowance as given by the Public Housing Authority (PHA) administering for those tenants only;
- Buildings without RHS or HUD Assistance, use the PHA utility allowance. An interested party may request the utility company estimation of actual utility consumption for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by a local utility company official, prepared on the utility company's letterhead, and maintained in the development file for the development. Use of the actual utility rates, whether higher or lower, is required once they have been received.

To remain in compliance, owners must utilize a correct utility allowance in order to properly determine unit rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case, the contract rent must be lowered. When a utility allowance changes, rents must be refigured within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42(g)(2). Utility allowances must be reviewed and updated as follows:

- When the rents for a development or building are changed, or there is a change in who pays the utilities;
- Within 90 days of an update by HUD, RHS, PHA, or local utility supplier;
- Within 90 days of a change in the applicable allowance (e.g., a new tenant is receiving HUD Section 8 rental assistance);
- Annually for developments or buildings with documentation from a utility sponsor.

The IFA requires that documentation be completed each year indicating how utility amounts were determined. A LIHTC form 004, Utility Allowance Documentation, must be completed at least once a year or whenever an update is necessary (whichever occurs first). A copy of the form must be submitted to the IFA once per year with the annual compliance certifications. The completed LIHTC form 004, which is located in Appendix A, must also be kept in the Development File.

Contact the appropriate agency to request current utility allowance information. The LIHTC Section at the IFA does not maintain the various utility allowances.

E. Household Size

Knowing the actual number of persons in the household is necessary for pre-1990 developments, where maximum rent limits are based on family size, not number of bedrooms. It is also necessary for determining the maximum allowable income of a household for all developments, regardless of the allocation year.

The following circumstances that affect household size should be noted:

- In the case of a pregnant woman, the unborn child is included in the size of the household and for purposes of determining the maximum allowable income. A household in the process of adopting a child is treated the same as a pregnancy;
- A live-in care attendant is included in household size, but the individual's income is not included in total household income for determining the maximum allowable income;
- Foster children should be included in the size of the household, but are not included for the purpose of determining the maximum allowable income.

Section 1.6 Rules Governing Units After Occupancy of Qualified Low-Income Tenants

A. Annual Recertification of Income

Section 42 requires that the household income of tenants in qualifying units be recertified annually. Therefore, at least once every 365 days from a household's last income certification date, management must complete an income recertification of the household. See Chapter 3 of this manual for complete information on recertification. Failure to recertify a household within 365 days of the last certification date is a reportable violation to the IRS.

B. Next Available Unit (140%) Rule (NAUR)

When the income of a qualified household increases above 140% of the current maximum income amount (over-income unit); and a building is at or below its applicable fraction, the next available unit rule (NAUR) goes into effect.

When the NAUR is in effect, the next available unit of comparable or smaller size in that building must be rented to a qualified low-income household (I.R.C. §42(g)(2)(D)(ii)(1994)). All comparable or smaller sized units must be rented to qualified tax credit households until the percentage of low-income units in the building equals the applicable fraction in which credit is based.

If the NAUR is adhered to, the over-income units are still considered qualified units and are included in the calculation of the applicable fraction if the units remain rent restricted.

If the NAUR is violated, all over-income units lose their low-income status and are counted in the building's fraction as market-rate. All units causing a NAUR violation will be reported to the IRS for noncompliance.

With the issuance of 26 CFR §1.42-15 (Appendix A), effective 9-26-97, the IRS made the following changes:

1. Over-income units (qualifying units whose income later exceeds 140% of CMI) are included in the calculation of the Minimum Set-Aside requirement.

2. Comparable unit is measured in the same method as the taxpayer used to determine the qualified basis of the building.

3. A current qualifying household is permitted to move to another unit within the same building, without having to re-qualify. The units exchange status.

4. A unit is not available for purposes of the NAUR when the unit is not available for rent due to a reservation that is binding under local law.

As stated previously, some developments received additional ranking points in the scoring of the tax credit application for targeting lower-income households. Special set-aside units refer to those units with lower income limits than those in the general set-aside (50% or 60% of CMI). It is necessary for on-site management agents or those responsible for income certifying households to be aware of any additional income requirements that exist for the properties they manage.

It is in the owner's best interest that the lease agreement contain language allowing rent adjustments due to a change of household income. (RHS Properties)

C. Unit Vacancy Rule (UVR)

Under the unit vacancy rule (UVR), if a building is at or below its applicable fraction; and a tenant vacates a qualified unit, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualified low-income household before any units of comparable or smaller size in the building are rented to non-qualifying (market-rate) tenants.

When a qualified low-income unit becomes vacant; and reasonable attempts are being made to rent that unit, that unit will continue to be included as a qualified low-income unit for meeting the minimum set-aside and in calculating the applicable fraction of the building if the requirements of the UVR are adhered to Treasury Regulation 1.42-5(C1)(ix), as found in Appendix A.

The IRS has not given any guidelines as to what constitutes "reasonable attempts" in regard to the UVR requirements. Management agents and owners should document all efforts to rent to a qualified low-income household.

When the UVR is violated, all units of comparable or smaller size that are rented to market-rate households prior to renting to a low-income household will be reported to the IRS as a violation.

Examples of Minimum Set-Aside, NAUR and UVR:

Hideaway Manor is a one-building tax credit development consisting of 10 apartments. All units are the same size, two-bedroom units. Units 1 through 5 are rented to qualified low-income tenants. Units 6 through 10 are rented to market-rate tenants. The owner chose the 40/60 minimum set-aside election. At the end of the first year for which credit was claimed, the owner established an applicable fraction of 50% (5 of 10 units).

Example 1:

Units #1 and #2 are recertified. The incomes of tenants in both units have increased above 140% of the CMI limit. At the same time, the tenant in unit #6 moves out, and a new market-rate tenant moves in. Several violations occurred.

The NAUR went into effect when units #1 and # 2 were recertified and remained in effect when the vacancy in unit #6 occurred. Since that unit was rented to a market-rate household first, the NAUR was violated.

As soon as the market-rate tenant moved into unit #6, units #1 and #2 automatically changed their low-income status to market-rate. Thus, 7 units are now market-rate units, causing the project minimum set-aside to be 30%. The minimum set-aside rule has been violated.

As noted above, units #1 and #2 are considered market-rate units. This caused the applicable fraction to drop to 30%. This will be reported as a Qualified Basis Violation.

Example 2:

Qualified low-income units #1, #4, and #5 vacate. Unit #4 is rented first, to a market-rate household. The rental of unit #4 to a market-rate household causes units #1, 4, and 5 to be in violation of the unit vacancy rule. All three of these units are now considered market-rate units, causing the applicable fraction of the building to decrease to 20%. Thus, the building is not in compliance with Section 42 because it has fallen below its project minimum set-aside of 40% and its established applicable fraction of 50% and violated the unit vacancy rule requirements.

D. Transfer of Existing Tenants to Another Set-Aside Unit

If an existing qualified household moves from one LIHTC unit to another in a different building in the development, this transaction is treated as a new move-in. All application, certification, and verification procedures must be completed for the transferring resident(s), including the execution of new income and asset verifications to determine eligibility the same as is done for a new, first-time occupant. This means that the household income must be within the current maximum allowable income limits of a new household.

If an existing household moves to a different LIHTC restricted unit in the same building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident whose income exceeds the applicable income limitation moves from an over income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. This provision applies only to households under leases entered into or renewed after September 26, 1997 and is not retroactive. For prior leases, all transfers, including those within the same building, must have been treated as new move-ins. (See 26 CFR §1.42-15, Appendix A.)

The IFA does not require interim recertifications for tenants who are transferred within a building. However, the date of the transfer must be clearly identified in the tenant file. The household must continue to be recertified on the anniversary of the original date it moved into the building. For "transfers" (which are actually new move-ins) to a different building, all of the initial certification requirements must be completed prior to move-in to the new unit.

E. Rules Governing the Eligibility of Particular Tenants and Uses

The following is a listing of rules governing the eligibility of certain tenants. For more information regarding tenant eligibility, consult Section 42 of the Code or a LIHTC textbook or guide.

- **Managers, Employees as Tenants**

It is permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a development. An employee may reside in a unit that is designated as common area or in a rental unit. In order for a household to be eligible to reside in a unit that is designated as common area unit, the head of household (or co-head) must be a full-time employee at the particular development. Persons who are employed less than full-time at the development are not eligible to reside in a common area unit. Persons (such as regional managers) who are employed at multiple developments are not eligible to reside in a common area unit. The manager or employee may also be included as an eligible LIHTC tenant if he or she is income-qualified.
All tenants, including employees of the development occupying LIHTC rental units that are not "common area", must be income-eligible, rent-restricted, and under a lease with an initial term of at least six months. If the manager or employee receives free rent or a rental discount the imputed value of the rent or discount, must be counted as income.

- **Ineligible Facilities**

No hospital, nursing home, sanitarium, life-care facility, retirement home providing significant services other than housing, dormitory, or trailer park is eligible to be a low income housing tax credit development. Commercial space within a tax credit development is not tax credit eligible.

- **Determining Student Eligibility**

Every full-time student over the age of 18 who is a member of any household residing in an LIHTC Unit must complete a Student Eligibility Certification for the initial certification and for every recertification of the household. This completed form must be included in the tenant file. A copy of this form is included in Appendix D of this manual.

i. If a single applicant/tenant or all the applicants/occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless one of the following criteria is met:

- <u>All household members are full-time students and such students are married and file a joint tax return;</u>
- At least one full-time student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state, or local laws;
- At least one full-time student receives assistance under Title IV of the Social Security Act (including AFDC, TANF);
- At least one full-time student is a single parent with a minor child (living in the household), and none of the tenants in the household is a dependent of a third party. This law became effective July 1, 1992. However, the law is unclear whether this revision applies to all tax credit developments, or only those that were allocated credit after June 30, 1992. The IRS will make the final determination in these cases.

ii. If a previously qualified low-income household changes due to any <u>tenant (do not consider children enrolled in Kindergarten through 12th grade</u>) becoming a full-time student, the household must meet one of the above criteria in order to remain eligible under the program rules. If none of the criteria is met, the unit will be considered a non-qualifying household or a market-rate unit.

iii. An applicant claiming any of the exceptions must be able to provide documentation to prove that status. An owner must require the applicant to indicate whether or not they are full-time students on the tenant certification form.

iv. To document student status (for full-time students and for those persons claiming to be part-time students) obtain a letter from the educational institution indicating that it classifies the person as a "full-time" or "part-time" student. When defining a full-time student, also note the following:

- Include those persons who are full-time students in a, junior college, community college, vocational school with a diploma or certificate program, or technical school,
- Include those persons who are completing an internship, thesis, or research as part of an academic program for educational credits if the school classifies the particular student as "full-time"
- Include those persons who are on break from school, including summer and spring breaks, but are planning to return to school for the next semester.

Also note the following in regard to full-time students and student households:

- Consider a single person household ineligible if her or she is a full-time student at the time of initial occupancy or will be at any time during the certification period (unless the individual meets one of the student exceptions described below);
- Consider a household of students eligible if it includes at least one part-time student or meets one of the student exceptions described below;
- Consider a household containing full-time students and at least one child (who is not a full-time student) an eligible household;
- Not consider children enrolled in kindergarten through 12th grade to be full-time students; and
- Consider TANF an acceptable Title IV program exception.

The IFA'S Position on Common Questions Concerning Student Eligibility:

In regard to "Married Persons who File a Joint Tax Return", note the following:

- For couples who got married in the current calendar year and who have not yet filed a joint tax return, but intend to file jointly for the present calendar year, a notarized statement (signed and dated by both spouses) indicating the intent to file jointly is acceptable. The owner/management agent should obtain a copy of the marriage license and the tax return, once filed, as documentation;
- For couples (including newlyweds and non-newlyweds) who were married prior to the end of the previous calendar year, but did not file a joint tax return for the previous calendar year, "intent" to file is not adequate and does not qualify the household for a student eligibility exception.

In regard to "Title IV of the Social Security Act" note the following:

- Includes only welfare benefits (commonly known as public assistance, or Family Independence Program, formerly called ADC);
- The Food Stamp Program was funded under the Food Stamp Act of 1977, not Title IV of the Social Security Act. Therefore, the receipt of food stamps alone does not qualify a household for this student exemption;
- Social Security benefits and Supplemental Security Income are not part of Title IV of the Social Security Act;
- Work study and Pell Grants are not part of the Title IV of the Social Security Act.

In regard to participants in a program similar to those funded under the "Job Training Partnership Act" (JTPA), note the following:

- Pell Grants, GI Bill, ROTC, and work-study do not qualify as JTPA programs;
- Apprenticeship programs and vocational schools do not qualify as JTPA programs.

In regard to "single parents receiving AFDC payments with minor children who are also students", note the following:

- The single parent receiving welfare benefits need not also be claiming the child (ren) as dependents on the tax return in order to be eligible under this exception.

In regard to "Single parents with minor children, none of whom is a dependent of a third party", note the following:

- The minor children must be claimed on the tax return of the head or co-head of the household who is residing in the unit;
- For newly divorced or separated parents who have not yet claimed the child(ren) on his or her tax return, there must be an official agreement to do so for the current year in order for this "intent to claim" to qualify the household under this student eligibility exception. If there is no official agreement, the children must have been claimed on the single parent's most recently filed tax return and be claimed on the tax return for the current calendar year;
- This can include a full-time student over the age of 18 who is away at school, but is listed as the dependent on the tax return of a single parent residing in the unit.

- **Married Persons Not Living With Spouse**

The income of all household members, including those members who are temporarily absent, must be included as part of total income. IFA assumes that all marital separations are temporary, unless documentation can be provided to indicate that it is permanent. The incomes and assets of both spouses must be included in calculating total household income if the separation is temporary.

- **Section 8 Recipients**

IRC Section 42(h)(6)(B)(iv) prohibits refusing to lease to a Section 8 voucher or certificate holder simply because that person is such a holder. A household may be denied residency if it fails to meet any other consistently applied screening criteria (i.e. criminal background, eviction history, and credit rating), with the exception of a minimum income requirement.

Chapter 2

Responsibilities

Section 2.1 The Iowa Finance Authority

The IFA allocates and administers the tax credit program for the State of Iowa. In addition, the responsibilities of the IFA are as follows:

A. Issue IRS Form 8609 (Low Income Housing Certification)

An IRS Form 8609 is prepared by the IFA for each building in the development. Part I of the form is completed by the IFA and then sent to the owner when the development is placed in service and all required documentation is received by the IFA. The original is sent to the IRS for their records to compare with the taxpayer's tax return. **A site review will be conducted prior to the issuance of an 8609.**

> **Note**: If rehabilitation and acquisition credits are claimed on the same building, the rehabilitation is treated by Section 42 as a separate building. Therefore, the acquisition and rehabilitation will receive separate 8609 forms.

The owner must complete part II of the form in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the form must be sent to the IFA. The owner sends the original to the IRS with the owner's personal, partnership, or corporate tax returns for the first taxable year in which the credit is claimed and each year, thereafter, in the compliance period. The IFA will not issue an IRS Form 8609 for each year of the compliance period. Before signing and dating Part II of the form, the owner should make multiple copies of it, one for each of the tax credit compliance years.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. The IFA cannot give legal or tax advice on the filing or completion of tax forms.

The issuance of the IRS Form 8609 begins the compliance-monitoring period. A sample copy of the form is included in Appendix A.

Part I of IRS Form 8609s are prepared and filed by the IFA only. If the IFA becomes aware that a developer or agent filed a self-prepared 8609 with the IRS, the IFA reserves the right to determine that all parties involved will not be eligible for future participation in Iowa's LIHTC program for a period of ten (10) years.

B. Prepare Regulatory Agreement/Restrictive Covenants

The IFA will prepare a Regulatory Agreement (Land Use Restrictive Covenant) prior to the issuance of the IRS Form 8609. This document must be recorded before the end of the calendar year in which credit is first claimed. The Regulatory Agreement must be an encumbrance on the property so that the restrictive covenants are prime. In the event the property is foreclosed the IFA will make every effort to retain affordability for the development. When the original recorded document is returned to the IFA; and all fees have been paid, the IRS Form 8609 will be sent to the owner.

C. Review Annual Owner Certification of Continuing Compliance, ~~See Appendix C.~~

- For information on the annual Owner Certification, see Section 2.2

D. Review Tenant Income and Rent Report,

- For information on the annual Tenant Income and Rent Report, see Chapter 4.

E. Conduct On-site monitoring

The IFA is required by the IRS, See Appendix C, to conduct in-depth, on-site inspections of all buildings in the development. For further information regarding on-site monitoring, see Chapter 3.

F. Notify IRS of Noncompliance

The IFA will provide written notification to the Taxpayer for items of non-compliance. The correction period will not exceed 90 days from the date of notice of non-compliance. The Authority may extend the correction period for up to 6 months, but only if the Authority determines there is good cause for granting the extension. During the 90 day time period, or the extension thereof, the taxpayer must supply any missing certifications and bring the Project into compliance.

G. Records Retention

The IFA will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. IFA will retain records of noncompliance or the failure to certify compliance for six years after its filing IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. Also see Chapter 3.

H. Conduct Training and Provide Continuing Education

The IFA will conduct or arrange compliance training and will disseminate information regarding their dates and locations. From time to time, the IFA will offer continuing education to assist the owner, the management company, and on-site personnel in complying with federal regulations and state rules. Owners and Management Companies of developments placed in service in 2001, and thereafter, are required to attend compliance training that is either approved or conducted by the IFA prior to receiving an 8609 from the IFA. A schedule will be sent to all owners once per year.

I. Rural Housing Services (RHS) Agreement

IFA does currently have an agreement with the RHS (formerly known as the Farmers Home Administration and sometimes referred to as Rural Economic and Community Development) with respect to the provision of monitoring certain tenant income and rent information. All RHS projects are subject to the compliance requirement outlined in this manual.

J. Possible Future Subcontracting of Functions

It is currently the intent of the IFA to perform the responsibilities listed above and outlined in the regulations governing this program. The IFA may, however, at some future time, decide to retain an agent or private contractor to perform some of the responsibilities listed above, in its sole discretion. In this event, the IFA shall use reasonable diligence to ensure that the agent or private contractor(s) properly performs the delegated monitoring functions. The IFA shall, however, at all times, retain responsibility for notifying the IRS of any noncompliance of which it becomes aware.

Section 2.2 Owner Responsibilities

The owner has chosen to utilize the LIHTC program to take advantage of the tax benefits provided. In exchange for the tax benefits, the owner must adhere to certain requirements and accept responsibilities. These responsibilities include, but are not limited to the following:

A. Allocation Requirements:

In the application, the owner provided comprehensive project information with evidence of overall economic feasibility. Prior to the issuance of a final allocation of credits, the owner certified to the total development costs and that all Program requirements had been met. **Any violation of the Program requirements or information represented in the application or certifications could result in the loss of the credit allocated.**

B. At a minimum, the development owner should be knowledgeable about the following:

1. The credit year of the development. (What is the date of allocation?)

2. The date(s) the building(s) was placed in service. (The placed in service date is the date of first possible occupancy, not necessarily actual occupancy – generally; this is the certificate of occupancy date.

3. If a rehabilitation development,
    a. Whether or not tenants were required to move out during rehab.
    b. Whether or not the building was occupied during the rehab.

4. The number of buildings in the development.

5. The minimum set-aside elected:

    a. 20/50 or;
    b. 40/60 or;
    c. Deep rent skewing or;
    d. 40/50 election for HOME or;
    e. Additional elections made in the Application for extra points.
    f. Same combination of the minimum set asides.

6. The percentage of the residential units in the development that are tax credit eligible, or the percentage of floor space that is tax credit eligible.

7. The year that credit was first claimed.

8. The terms, under which the tax credit reservation was made, including statutory set aside, deeper targeting agreements, etc. For more information, see Chapter 1.

9. The Building Identification Number (BIN) for each building in the project.

10. The terms and conditions stated in the LURA.

C. Proper Administration and Record Keeping

The owner is responsible for proper administration of the development, including the Code requirements that tenant income and rent records be kept and retained for each building in the project for the compliance period.

The owner of any building, for which credit has been or is intended to be claimed, must keep records that include all of the information set forth below, **on a building by building basis**, for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. **However, the records for the first year of the credit period must be kept for six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.**

Record Keeping Internal Revenue Service 26 CFR (code of the Federal Register) Parts 1 and 602, Section 1.42-5(b)(1) states that the owner of a low-income housing development must be required to keep records for each **building** in the development to which an allocation on the Low Income Housing Tax Credits have been made.

Record Retention IRS 26 CFR Parts 1 and 602, Section 1.42-5(b)(2) state that the owner of a low-income project must be required to retain the records described in PART 1, for at least 6 years after the due date (with extensions) for filing the federal income tax returns for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. The compliance period is a defined term in Section 42(I)(1) and lasts only 15 years. The remaining period is the Extended Use Period as defined by 42(h)(6)(D).

The records **must** include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rent unit);
2. The percentage of residential rental units in the buildings that are low income units;
3. The rent charged on each residential unit in the building, supporting documentation and the applicable utility allowance;
4. The number of occupants in each low income unit;
5. The low income unit vacancies in the building and information that shows when and to whom the next available units were rented (This information must include the unit number, tenant name, move-in dates and move-out dates for all tenants, including market rate tenants.);
6. The annual income certification of each eligible tenant;
7. Documentation to support each eligible tenant's income certification;
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period;
9. The character and use of the nonresidential portion of any building included in the project's eligible basis under Section 42(d) of the code (e.g., resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

E. Maintain a Development File

Owners must maintain a development file that contains all pertinent documents for the development. The IFA retains the right to inspect the development file at any time. The development file must contain:

1. All approved tax credit applications together with applicable attachments.
2. Recorded copy of the Regulatory Agreement/Restrictive Covenant (except for pre-1990 credit projects).
3. For 1987-89 buildings, election to calculate rent on a bedroom basis, if applicable.
4. IRS Forms 8609 and 8586 for each building for each year credit is claimed.
5. All applicable documents relating to any other form of housing or finance programs (i.e., HOME, HUD Section 8, RHS. etc.)
6. Documentation that the development complies with any statutory set-asides or Qualified Allocation Plan requirements.
7. For each utility allowance update or revision which must occur at least once per year. A sample copy of this form is included in Appendix A of this manual. For more information regarding utility allowances, see Chapter 1 of this manual.

F. Maintain a Tenant/Unit File for Each Unit in the Development

The tenant/unit file requirements are outlined in Section 2.2 of this manual. (Page 3-4)

G. Reporting and Certification Requirements

1. **Certification** IRS 26 CFR Parts 1 and 602, Section 1.42-5(1) state that the owner of a low-income housing development must be required to certify to the Agency, for the preceding 12 month period that the project met the requirements of the following provisions. This requirement is satisfied by the owner submitting the attached Exhibit A: Owner's Annual Certification of Compliance, and related documents, for each year of the compliance period, on effective date of the 2000 QAP. For Subsequent years, Annual Certifications are due March 1st and Initial Certifications are due April 1st.

2. **Submit copy of IRS Form 8609**: A copy of the signed and dated IRS form 8609 and Schedule A must be submitted to the IFA with the Annual Owner Certification for the first year Credit Period.

3. **Submit Copy of IRS Form 8586**: This form must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. A copy of IRS Form 8586 must be sent to the IFA for the first year of the credit period.

4. **Submit copy of IRS Form 8611**: This form is used by taxpayers who must recapture tax credits previously claimed. A copy of IRS Form 8611 must be sent to the IFA upon completion and submission to the IRS.

5. **Prepare and submit annual owner certifications**. The owner is responsible for reporting the development's status, condition, and compliance with program requirements to the IFA annually in the form and manner the IFA specifies. These certifications are made under penalty of perjury that the information provided is true, complete, and in compliance with Section 42 of the IRC.

6. **Prepare and submit initial owner certifications.** The owner is responsible for reporting the development's status, condition, and compliance with program requirements to the IFA in the form and manner the IFA specifies. This is for credits taken on a development for the first time in the previous year. These certifications are made under penalty of perjury that the information provided is true, complete, and in compliance with Section 42 of the IRC.

H. Train On-site Personnel

The owner must make certain that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the project.

I. Ensure Proper Maintenance

The owner is responsible to ensure that the LIHTC development is maintained in a decent, safe, and sanitary condition. Failure to do so is a reportable act of noncompliance.

J. Administration and Notification

The owner must notify the IFA immediately in writing of any changes in the ownership composition or in the management agent, such as name, address, and telephone number

If the composition of the ownership entity changes, the owner must provide details and include a sales agreement and a copy of the bond if the property has been sold. For more information on development sales, see Chapter 3.

The owner is responsible for informing the IFA of any event that might affect the development's credit throughout all phases of development, rent-up, and operation. This includes the initial phases of construction, the scheduled placed-in-service date and the completion of the development as outlined in the Code.

K. Compliance Training

Owners of development's placed in service in 2001 and thereafter are required to attend compliance training that is either approved or conducted by the IFA prior to receiving an 8609 from the IFA. A schedule will be sent to all owners once per year.

L. Declaration of Land Use Restrictive Covenant (LURA)

Prior to claiming the tax credits, the building owner must record an approved IFA Declaration of Land Use Restrictive Agreement (LURA) which must be in effect as of the end of the taxable year credits are claimed 42(h)(6)(A).

2.3 Management Company and on-site personnel responsibilities

A. General

The Management Company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information, as needed, to the IFA and submit all required reports and documentation in a timely manner.

B. Noncompliance

If the management company determines that the development is not in compliance with the LIHTC program requirements, the management company should correct the noncompliance whenever possible.

C. Compliance Training

Management staff should plan to attend any training provided or offered by the IFA. Beginning with the year 2001, all owners and managers must attend training prior to the issuance of an 8609.

NOTE: THE ULTIMATE RESPONSIBILITY FOR COMPLIANCE AND PROPER ADMINISTRATION OF THE LIHTC PROGRAM IS THE OWNER.

Chapter 3

Compliance Monitoring Procedures

Section 3.1 Compliance Period

A. All LIHTC Developments

Once allocated by the housing credit agency, low income housing tax credits may be claimed annually over a ten (10) year period beginning either with the year placed in service or the following year, depending on which option is selected by the owner, unless the qualified basis is increased after the first year of the credit period as specified in IRC 42 (f)(3). However, in order to claim the credit, all developments receiving a credit allocation since 1987 must comply with eligibility requirements for a period of 15 taxable years beginning with the first taxable year of a building's credit period (the compliance period). **Additionally**, **owners who agreed in their applications to have longer compliance periods will be bound for the length of time specified**.

B. Credit Allocations after December 31, 1989

Developments receiving a credit allocation after December 31, 1989, entered into a Declaration of Land Use Restrictive Covenant (LURA) for Housing Tax Credits with the IFA at the time a final allocation of credit was issued. These developments must comply with eligibility requirements for an additional 15 years defined as extended use periods based on code requirements or developer election.

This restrictive covenant binds the owner and any successors to maintain specified low-income occupancy during the extended use period. Earlier termination of the extended use period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying enactment of such earlier termination, the owner will be bound by this election in the LURA.

C. Credit Allocation for 1987, 1988, and 1989 Only

As stated above, developments receiving a credit allocation prior to January 1, 1990, have only a 15-year compliance period**. However, any building in such a development that received an additional allocation of credit after December 31, 1989, must comply with eligibility requirements in effect beginning January 1, 1990, and will also be bound by the LURA.**

D. GENERAL INFORMATION

The purpose of compliance monitoring is to determine the owner's compliance with federal and state regulations and with the IFA policies. However, compliance is solely the owner's responsibility and is required to retain and use the credit.

Monitoring each development is an ongoing activity that extends throughout the credit compliance period (15 years of longer). The Code requires the IFA to conduct compliance monitoring and to inform the IRS through the issuance of form 8823 of noncompliance, or the failure of the owner to certify to compliance no later than 45 days after the period of time allowed for correction**. Notification to the IRS is required whether the noncompliance has or has not been corrected (**26CFR§1.42-5 - 1994**) See Chapter 3. Noncompliance** for detailed procedures**.**

Section 3.2 The Compliance Monitoring Manual

The IFA will provide a copy of the **Compliance Monitoring Manual (**the **Manual)** to owners of tax credit developments when the development is placed in service and the final credit allocation is made (IRS Form 8609). It is the owner's responsibility to provide additional copies of the **Manual** to management staff. Additional copies may be requested from the IFA, or printed from the IFA's website.

The **Manual** describes the IFA's compliance monitoring standards, which the owner and management agents must follow. This standard does not prohibit owners/managers from establishing higher standards from that specified in the manual.

The **Manual** also contains the reports and certification forms that must be submitted to the IFA; required tenant eligibility forms; Section 42 of the Code; sample IRS forms; and final compliance monitoring regulations, as well as other pertinent IRS notices and rulings.

Section 3.3 Reporting

The IRS and the IFA require Owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this manual to either the IRS or the IFA as appropriate will constitute noncompliance and may make the Owner subject to recapture or ineligible for credit.

A. Low Income Housing Allocation Certification (IRS Form 8609)

A copy of the signed and dated IRS Form 8609 (Part II) and Schedule A for each building must be submitted to the IFA with the Annual Owner Certification of the year following the first year credit period.

B. Delay of Placed In Service

If the owner elects to defer the credit until the year following the placed-in-service date of the building, The IFA must be notified in writing by May 15 of the year following the placed-in service date.

C. IRS Form 8609

If the applicable fraction/qualified basis is increased (and additional credit taken) in any year following the first year of the tax credit period, IRS Form 8609 must be submitted to the IFA by February 15 of the year following the year the additional credit was taken.

D. Low Income Housing Credit (IRS Form 8586)

A Low Income Housing Credit (IRS Form 8586) form must be completed to claim credits for the first Taxable Year in which credit is taken and every year thereafter in the Compliance Period. A copy of Form 8586 must be sent to the IFA for the first year of the credit period.

Filing Instructions: IRS Form 8586 must be attached to the Low Income Housing Credit Allocation Certification (IRS Form 8609) and Schedule A (form 8609) and submitted annually with the Owner's federal tax returns when filing.

E. Recapture of Low Income Housing Credit Form 8611

The IRS Form 8611 is used by taxpayers that must recapture tax credits previously claimed. A copy of Form 8611 must be sent to the IRS and the IFA upon completion by the owner.

F. Annual Owner Certification of Continuing Program Compliance

An owner's Certification of Continuing Program Compliance must be submitted annually to the IFA no later than March 1 of each year. The owner is required to certify that the development is and has been in compliance for the preceding year with regard to:

- The development meets the requirements of: either 20/50 test set forth at Section 42(g)(1)(A) of the Code, or the 40/60 test set forth at Section 42(g)(1)(B) of the Code, or deep rent skewing, whichever is applicable;
- There was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the development, or that there was a change and a description of the change;
- The owner has received an annual income certification from each low income tenant and documentation to support that certification;
- Each low income unit in the development was rent restricted in accordance with the applicable provisions of Section 42 (g) of the Code and LURA;
- All units in the development were available for use by the general public and were used on a non transient basis (except for permissible transitional housing for the homeless);
- Each building in the development was suitable for occupancy according to all local health, safety, and building codes;
- There has been no change in the eligible basis of any building in the development, or, if there has been a change, the nature of that change;
- All tenant facilities in each building in the development that have been included in the eligible basis are provided on a comparable basis to all tenants without additional charge;
- If a low income unit became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to people who have qualifying incomes before any units in the development were or will be rented to tenants not having qualifying incomes;
- If the income of any tenant of a low income unit increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to tenants having a qualifying income;
- If applicable, an extended low-income housing commitment as described in Section 42(h)(6) of the Code was in effect;
- There has been no change in the ownership of the development or any of its buildings, or, if there has been a change, a description of the change has been provided to the LIHTC Section of the IFA in writing.

The owner's annual certification must be submitted each year with the owner's original signature and date of signature. Signatures of a person other than an authorized signatory of the ownership entity will not be accepted unless the owner submits a letter to the IFA stating that the named individual is an authorized signatory for the ownership entity.

Failure by the owner to supply legible and complete annual certification is considered noncompliance by the IRS.

G. Initial Owner Certification of Continuing Program Compliance

An Owner's Initial Certification of Continuing Program Compliance must be submitted to the IFA no later than April 1 of the following year of placed in service. The owner is required to certify that the development is and has been in compliance with regard to the above named items.

H. Initial and Annual Tenant Income and Report Forms

Compliance is monitored on a building by building basis. A separate Form must be submitted for each building.

The Annual Compliance Report is prepared annually. The Initial Compliance Report is prepared only for the first year the building (s) is placed in service. Both Reports detail the following:

- The number of qualifying low income units.
- Information on each low income tenant, including name, social security number, number of people in household, and annual income.
- The number of bedrooms in each unit.
- The rent charged for each unit.
- The unit number, tenant name, move-in date, and move-out date for all tenants, including market rate tenants.
- Such other information as is set forth on the form and required by the IFA.

An Owner Certification and a Tenant Income and Rent Report must be submitted electronically (either by e-mail or diskette) to the IFA for each year in which a development was in service or occupied for one day or more. A signed paper copy along with e-mail on diskette must also be submitted. Dates of submission to be determined by the IFA. Failure to submit legible and thoroughly completed forms when they are due will be considered noncompliance. Copies of these forms are included in Appendix C of this manual.

Section 3.4 Setting Up and Organizing the Tenant File

A separate file must be maintained for every unit/tenant in the development. The IFA recommends that all developments use pressboard divider files or classification folders.

A. Lease -- The IFA does not provide a lease for Owners to use**. It is the responsibility of each owner to create an acceptable lease. The initial lease term for all Section 42 residents must be a minimum of six months in length, unless the unit(s) is a qualified Single Room Occupancy Unit.**

B. 3rd Party Verifications – There must be a 3^{rd}-2^{nd}-1^{st} party verification of income and assets for each corresponding source of income and assets listed on the application. These verifications must have been mailed or faxed directly to the source and not given to the tenant to complete or deliver. Where applicable, there should be further evidence to support the verifications (i.e. – copy of divorce decree showing award of maintenance and child support or a Realtor's statement of market value for real estate, a self-employed tenant's tax returns for the previous 2 years, etc.) if an adult household member has no income or assets, a zero income or zero asset certification must be signed. See Appendix D for copies of the verification forms.

C. Tenant Income Certification – Form 100 - This form is completed by the owner or management agent after the third, second, first party verifications have been received. The owner or manager takes the information from the verification forms and fills in the certification. Each adult household member 18 years of age or older must sign this certification as well as the owner or manager. See Appendix D (form 100) for a copy of the Tenant Income Certification. Upon initial certification, do not verify the employment of other earned income of an applicant who is 17 + years old and not the head, spouse or co-head of the household, even though they will turn 18 during the initial certification. Unearned income must always be included regardless of age.

D. Other Documents -- This includes any contract for optional items that the tenant pays for if not contained in the lease. The items included but no limited to are garage or underground parking if not in base rent, pets, documentation as to the change in the number of occupants, and income and asset certification if an additional adult moves into the unit.

E. Applicable Housing and Financing Requirements Specific to this Unit. If other housing or financing programs govern the development, the applicable documentation reflecting compliance to its requirements should also be in the resident's file. These programs may include; HOME Investment Partnership, Tax Exempt Bond Financing, HUD or Rural Housing and Community Development Services (formerly Farmer's Home Administration).

A separate file must be maintained for every unit/tenant in the development. The IFA recommends that all developments use pressboard divider files or classification folders.

Section 3.5 Noncompliance

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for tax credit because of failure to satisfy LIHTC Program requirements.

Types of Noncompliance

Generally, during the Compliance Period a development is out of compliance and recapture may apply if:

A. Development Violations:

Minimum Set aside.

- A building or an ownership interest in a building is disposed of; **or**
- The development no longer meets the minimum set-aside requirements of Section 42(g)(1), the gross rent required of Section 42(g)(2), or the other requirements for the units which are set-aside; **or**

B. Building Violations:

- There has been a change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of the building from one year to the next;
- Owner does not comply with next available unit rule or unit vacancy rule; **or**

C. Health and Safety:

- The apartment units, common areas, or grounds have major violations of health, safety, and building codes.
- The Owner fails to make repairs in a timely manner.

D. Reporting Violations:

- The Owner fails to submit the initial information forms (copy of filed IRS Form 8609);
- The owner fails to submit the annual Owner's Certificate of Continuing Compliance, utility allowance documentation, owner certification, tenant income and rent report, along with any applicable supporting documentation in a timely manner;

- Owner is using inappropriate utility allowances;
- Issue an 8823 for failure to respond to information requested upon site visits.

E. Examples of Non Compliance requiring an 8823 to be issued:

- Household income above income limit upon initial occupancy;
- Major violation of health, safety, and building codes;
- Pattern of minor violations of health, safety, and building codes;
- Owner failed to submit annual certification.
- Changes in eligible basis.
- Development not available to the general public;
- Gross rent(s) exceeded tax credit limits;
- Household income increased above income limit and available unit was rented to market rate tenant;
- Development is no longer in compliance and is no longer participating in the low-income housing tax credit program;
- Owner failed to execute and record extended-use agreement within time prescribed by Section 42(h)(6);
- Low-income units occupied by nonqualified full-time students;
- Owner failed to maintain or provide tenant income certification & documentation;
- Owner did not properly calculate utility allowance;
- Owner has failed to respond to agency requests for monitoring reviews and fees;
- Low income units used on a transient basis;
- Other non-compliance issues (explanation will be attached).

Section 3.6 Consequences

If the development is out of compliance, a penalty may apply to all low income housing tax credit units in the development. Penalties include:

- Recapture of the accelerated portion of the Tax Credits for prior years;
- Disallowance of the credit for the entire year in which the noncompliance occurs;
- Assessment of interest for the recapture year and previous years.

Section 3.7 Notification of Noncompliance to Owner

The IFA is required to provide prompt written notice of noncompliance to the owner if:

- Any required submissions are not received by the due date;
- Tenant income certifications, supporting documentation, and rent records are not submitted when requested by the IFA; and/or
- The development is found to be out of compliance through inspection, review, and or other means with the provisions of Section 42 of the IRC.

Section 3.8 Notification by Owner to the IFA

If the owner or owner's agent(s) become aware of noncompliance with the LIHTC program requirements, the owner must submit written notification to the IFA with-in 30 working days. Examples of occurrences when the IFA must be notified:

- When a development or building is entirely out of compliance and will not be brought back into compliance any time in the near future;
- When the development fails to meet its minimum set-aside requirement in the first year credit is claimed;
- When the development falls below its minimum set-aside in subsequent years;
- When the owner makes the decision to withdraw the development or a building in the development from the Program and discontinues claiming credits on the development or building;
- When the owner changes the applicable fraction or qualified basis of a building.

Section 3.9 Owner Response

When the owner receives a notification of noncompliance from the IFA, the owner has the opportunity to respond in writing to the letter within the prescribed correction period. Because of the complexity of tax credit regulations and the necessity to consider their applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues.

Section 3.10 Correction Period

Should the IFA discover as a result of an inspection or review, or in any other manner, that the development is not in compliance with Section 42, or that credit has been claimed or will be claimed for units which are ineligible, the IFA shall notify the owner promptly.

The owner shall have a maximum of 90 days from the date of notice to the owner to cure the noncompliance.

Section 3.11 Reporting Noncompliance to Internal Revenue Service

The IFA is required to file IRS Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance", with the IRS no later than 45 days after the end of the correction period (as described above) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected.

The IFA must explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. By law, the IFA must notify the IRS whether or not the non compliance or failure to certify is corrected. IFA must explain the nature of the non compliance or failure to certify to the IRS.

If a building is entirely out of compliance and will not be in compliance at any time in the future, the IFA will report it on a IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

Section 3.12 Recapture

Recapture is defined as an increase in the owner's tax liability because of a loss in tax credits due to noncompliance with program requirements.

The IRS will make the determination as to whether or not the owner faces recapture of tax credits as a result of noncompliance.

IRS Form 8611 is used by taxpayers who must recapture tax credits previously claimed. A copy of IRS Form 8611 must be sent to the IRS and the IFA upon completion by the owner.

Section 3.13 Retention of Noncompliance Records by the IFA

IFA will retain records of noncompliance or failure to certify for six years beyond IFA's filing of the respective IRS Form 8823. In all other cases, IFA will retain the certification and records described in paragraph (c) of Reg. 1.42-5 for three years from the end of the calendar year IFA receives the certifications and records.

Section 3.14 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document with correction fluid or "white out" will not be accepted by the IFA. The IFA recommends that when a change is needed on a document, draw a line through the incorrect portion, write or type the correct wording. The person making the change should initial the correction.

Section 3.15 Sale, Transfer, or Disposition of the Development after the Placed-in Service Date

Generally, any change in ownership of a building or a partnership interest is considered a potential recapture event. The owner faces recapture of the accelerated portion of any tax credits claimed on the development. The amount of the repayment is equivalent to approximately 1/3 of the credits claimed on the development. Recapture may possibly be avoided if the owner selling the building or the partnership interest posts a bond satisfactory to the IRS, and the IRS determines that the development is expected to remain in compliance for the balance of the compliance period. The new owner of a development may then be eligible to continue claiming tax credits. Forms pertinent to selling or disposing of LIHTC developments are IRS form 8611 (Recapture of Low-Income Housing Credit) and IRS form 8693 (Low-Income Housing Tax Credit Disposition Bond)

When a sale occurs, the owner **MUST** submit the following to the IFA:

- An executed copy of the purchase agreement;
- Recorded Statutory Warranty Deed indicating ownership or a copy of the title policy indicating ownership;
- A copy of the bond posted for the development and the completed IRS form 8693, Low-income Housing Credit Disposition Bond, if applicable;
- A copy of the IRS 8611, Recapture of Low-Income Housing Credit;
- A letter from the previous owner indicating the name, address, and phone number of the new owner;
- A letter from new owner indicating name, address, and phone number of the management agent;
- Completion of Exhibit B – Transfer of Ownership, Appendix C;
- Any other reasonable evidence that the IFA may deem necessary.

The IFA will recognize a new owner or ownership entity only after all required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the owner of record and any compliance violations will be reported to the IRS under the name of the owner of record. The IRS has also suggested in Reg. 1.42-5 that, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed.

This section of the compliance manual is intended only to provide a brief, generalized description of the requirements for selling or withdrawing LIHTC developments. The owner should consult an attorney or other professional knowledgeable about the LIHTC program for advice and guidance concerning sales.

Section 3.16 Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements are set forth herein as issued by the IFA pursuant to Treasury Regulations. These provisions may be amended by the IFA, for purposes of conforming with the Treasury Regulations and/or as may otherwise be appropriate, as determined by the IFA or the IRS. In the event of any inconsistency or conflict between the terms of these monitoring procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.

Section 3.17 Agency Liability

Pursuant to the provisions of 26 CFR Parts 1 and 602, Section 1.42-5(g) of the Regulations, compliance with the provisions of Section 42 is the responsibility of the owner of the buildings to which an allocation of low income housing tax credits has been made. The obligation of the IFA to monitor the owner's compliance with the provisions of Section 42 does not make the IFA liable for any noncompliance on the part of the owner.

Section 3.18 Conduct On-site monitoring

By the end of the second calendar year following the year the last building in the development is placed in service and for at least 20 percent of the development's low-income units, an inspection will be conducted. The IFA must inspect the units and review the low-income certification, the documentation supporting the certification, and the rent records for the tenants in those units.

At least once every three years, the IFA must conduct on-site inspections of all buildings in the development and, for at least 20 percent of the development's low-income units, inspect the units and review the low income certifications, the documentation supporting the certification, and the rent records for the tenants in those units.

The IFA will randomly select which low-income units and tenant records are to be inspected and reviewed by the IFA. The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing developments advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, the IFA may give an owner reasonable notice that any inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

Under the inspection provision, the IFA must have the right to perform an on-site inspection of any low-income housing development at least through the end of the compliance period of the buildings in the development. For the on-site inspection of buildings and low-income units required, the IFA must review any local health, safety, or building code violations reports or notices retained by the owner and must determine whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes.

Also taken into account is whether the buildings and units satisfy the uniform physical condition standards for public housing established by HUD. The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing development under Section 42 must continue to satisfy these codes and, if the IFA becomes aware of any violation of these codes, the IFA must report the violation to the Service. However, provided the IFA determines by inspection that the HUD standards are met, the IFA is not required to determine by inspection whether the development meets local health, safety, and building codes.

The Iowa Finance Authority will send results of the inspection to the owner. Please note that IFA may place a development on a monthly or quarterly inspection cycle if violations are severe in nature or numerous.

Chapter 4

Procedures for Determining Tenant Income and Eligibility

Section 4.1 Overview of the Initial and Annual Certification

Potential tenants for rent-restricted units should be advised **early** in the application process that there are maximum income limits that apply to these units. Management should explain to potential tenants that the **anticipated** gross income of all persons 18 years of age or older, and unearned income of minor children expecting to occupy the unit must be included and verified on a **Tenant Income Certification** (Appendix D – Form 100) **prior to occupancy and annually** thereafter for continued eligibility.

It is the owner's responsibility to select and rent to qualified tenants. The IFA will not qualify or approve eligible tenants. Initially, tenant eligibility is determined at the time of move-in certification. Before a tenant takes occupancy, owners or managers must determine that the household will cause the unit to be a qualifying housing tax credit unit. This is called the **Initial Certification**. Each year, thereafter, a recertification must be performed to ensure continued compliance. This is called the **Annual Recertification**.

The certification consists of a written tenant application or questionnaire, third party verification of all sources of income and assets, and a calculation of annual income by the owner or management agent. The **Tenant Income Certification-Form 100** is to be completed by the owner or manager and signed and dated by all adult household members **and** by the owner or management agent.

Section 4.2 Tenant Application

Since the LIHTC Program uses special definitions for income and households, a fully completed application is critical to an accurate determination of tenant eligibility. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets. An application form is attached in Appendix D Form 101 for Tax Credit and Form 101 A for RHS/Tax Credit Properties.

A good application is also used as a basis for determining which written third party verification may be necessary. The application, along with all supporting documentation and the Tenant Income Certification will be reviewed by the IFA staff during an on-site review or tenant file review.

The IFA recommends that roommates complete separate applications.

The IFA application includes:

- The name, birth date, sex, age, and social security number of each person that will occupy the unit (legal name should be given just as it will appear on the lease and tenant income certification);
- The current or anticipated student status of each applicant expected during the twelve-month certification period;
- All sources and amounts of current and anticipated annual income expected to be derived during the twelve-month certification period. This includes assets now owned and the income from those assets, as well as any assets disposed of for less than fair market value during the previous two years;

- The name of any person not listed on the application who expects to move into the unit during the next 12 months or any anticipated changes to household composition;
- The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered sensitive and will be handled accordingly.

Section 4.3 Verification Procedures

All regular sources of income, including asset income, must be verified. Verifications must be received by the management agent prior to the signing of the Tenant Income Certification and actual move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets.

Upon receipt of all verification, owners or managers then determine if the resident is still qualified for participation in the LIHTC Program.

A. Effective Term of the Verification

Third-party verifications of income are valid for 90 days prior to move-in and annual recertification. If after 90 days the tenant has not yet moved in, the information may be verbally updated from the source. This verbal verification is valid for an additional 30 days. After this time, a new written verification must be obtained. A verbal update must be documented in the applicant's file.

B. Methods of Verification

Written Verification:

1. Written verification directly from the source (third-party verification) is the standard preferred and most reliable method of verifying income. Written verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets attempted.

2. Alternative Types of Verification:

When written verification is not possible prior to move-in, there are two options:

- The first is direct contact with the source. In order to ensure acceptability to the IFA, the verbal verification must be followed up by written verification as soon as possible. The conversation must be documented in the applicant's file to include all the information that would be included in a written verification. Include the name and title of the contact, the name of the on-site management representative accepting the information, and the date. Prior steps used to obtain written verification should be documented to show just cause for using verbal verification;
- The second method is to obtain a faxed copy of the verification directly from the source **(not the tenant).**

C. Verification Transmittal

- Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request is not returned in a timely manner.

- Income verification requests must be sent directly to and from the source. The forms are never given to the tenant to obtain signatures. To ensure a timely response, it is suggested that a self-addressed stamped envelope be included with the request for verification;
- Under no circumstances should the applicant or resident be allowed to send or deliver the verification form to the third party source;
- All tenant income, asset, and eligibility verification should be date-stamped as they are received.

D. Acceptable Forms of Income Verification

Specific information must be obtained on income verifications. For consistency, the verification forms provided by the IFA in Appendix D must be used. If information that you need is not provided on these forms, you may add to the verification by attaching an Exhibit to the IFA form. The forms in Appendix D are the minimal required documentation to be used and are not certified to be complete. They are provided as a tool. Should there not be a specific verification form which is needed, the owner/managing agent may create their own form

For specific types of income situations, the following acceptable forms of verification, **in the order of acceptability**, must be included:

1. Employment Income:

    a. Employment verification form - completed by the employer or statement from the employer on company letterhead. Verification must specify salary or wages, frequency of pay, effective date of last pay increase, and probability and effective date of any anticipated increase during the next 12 months (Documentation of 900 telephone numbers are acceptable);

    Note: If a tenant is employed by a business owned by the tenant's family, 4 copies of recent pay stubs not exceeding 90 days old, 3 copies of pay check stubs if paid monthly verifying year-to-date earnings.

    b. Check stubs or earnings statements showing the employee's gross pay per pay period and frequency of pay;

    c. W-2 forms;

    d. Notarized statements, affidavits or income tax returns signed by the applicant describing self-employment and amount of income or income from tips and other gratuities;

2. Net Income from a Business (Self-Employment Income):

    a. IRS Tax Return, Form 1040, including any:
        - Schedule C (Small Business)
        - Schedule E (Rental Property Income)
        - Schedule F (Farm Income)
        - Schedule SE for self employment

    b. An accountant's calculation of net income;

    c. Audited or non audited financial statement(s) of the business;

d. Loan application listing income derived from the business during the previous 12 months;

e. Applicant's notarized statement or affidavit as to net income realized from the business during the previous years.

3. Social Security, Pensions, Supplemental Security Income (SSI), Disability Income:

The following items are required to verify the income derived from the above sources:

a. Copy of award or benefit statement. This statement is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living raise; or

b. Copy of award or benefit verification form completed by the agency or company providing the benefit.

Copies of checks or bank statements showing net amounts (after SSI or Medicare deductions are taken) are acceptable verification .

Special instructions for Verifying Social Security Benefits and Supplemental Security Income: If an eligible tenant does not have a current benefit statement from Social Security, the following must take place:

Option: The eligible tenant, rental applicant, or rental agent may expedite the verification process by calling the local office of the Social Security Administration.

- Supplying his or her social security number; and
- Requesting a copy of his or her benefit statement for either Social Security or Supplemental Security Income
- The rental agent may call the Social Security Office and request a benefit for either Social Security or Supplemental Security Income

4. Unemployment Compensation:

a. A verification form completed by the unemployment compensation agency;

b. Records from the unemployment office stating payment dates and amounts.

5. Alimony or Child Support Payments:

a. A copy of a separation or settlement agreement or a divorce decree stating the amount and type of support payment schedule;

b. A letter from the person paying support;

c. A copy of the latest check and documentation of how often the check is received. Owner must record the date, amount, and number of check;

d. The applicant's notarized statement or affidavit of the amount received or that support payments not being received and the likelihood of support payments being received in the future.

e. Copy of print out from Child Support Recovery Unit as to amount of payments received.

f. Attorney affidavit.

6. Recurring Contributions and Gifts:

a. Notarized statement or affidavit signed by the person providing the assistance, giving the purpose, dates, and value of the gifts; or

b. The applicant's notarized statement or affidavit that provides the purpose, dates, and value of gifts.

7. Unemployed Applicants:

a. The income of unemployed applicants with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as outlined above;

b. If applicant is currently unemployed and anticipating future income, he/she must provide evidence of current anticipated income for the certification year by executing a Certification of Zero Income Affidavit (Appendix D-Form 108) and providing a signed copy of the prior year's federal income tax return;

c. If applicant is non-employed and intends to live off of assets only, a Certification of Zero Income Affidavit (Appendix D-Form 108) must be submitted along with a clarification sheet.

8. Family Assets Now Held:

a. Verification forms, letters, or documents from a financial institution, broker, etc;

> **Note**: If financial institutions charge a fee to the applicant or tenant for providing verifications, the forms of verification in paragraph b., below would be the preferred method.

b. Account statements, passbooks, broker's quarterly statements showing value of stocks or bonds, etc., and the earnings credited the applicant account statements, or financial statements completed by a financial institution or broker;

> **Note**: The owner must adjust the information provided by the financial institution to project earnings expected for the next 12 months.

c. Quotes from a stock broker or realty agent as to net amount the family would receive if they liquidated securities or real estate;

d. Copy of IRS Form 1099 prepared by the financial institution showing the amount of income provided by the asset;

e. Real estate tax statements if tax authority uses approximate market value;

f. Copies of closing documents showing the selling price, the distribution of the sales proceeds, and the net amount to the individual;

g. Appraisals of personal property held as an investment;

h. Applicant's notarized statements or signed affidavits describing assets or to verifying cash held at the applicant's home or in safe deposit boxes.

9. Assets disposed of for less than fair market value during two years preceding effective date of certification or recertification. Suggested information to obtain and acceptable forms of verification are included below:

a. For all certifications and recertifications, obtain family's certification as to whether any member has disposed of assets for less than fair market value during the two years preceding effective date of certification or recertification;

b. If the family certifies that they did dispose of assets for less than fair market value, disposal of assets form. Appendix D must be completed.

10. Income from sale of real property pursuant to a purchase money mortgage, installment sales contract, or similar arrangement. The following provide suggested information to verify with a third party and acceptable forms of verification:

a. A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next 12 months. (A copy of the check paid by the buyer to the applicant is NOT sufficient since appropriate breakdowns of interest and principal are not included);

b. Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification.

11. Rental income from property owned by applicant/tenant. The following provide suggested information to verify with a third party and acceptable forms of verification:

a. IRS Form 1040 with Schedule E (Rental Income);

b. Copies of latest rent checks, leases, or utility bills;

c. Documentation of applicant/tenant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedules showing monthly interest expense);

d. Lessee's written statement identifying monthly payments due the applicant and applicant's affidavit as to net income realized.

E. Differences in Reported Income

Management should give the applicant the opportunity to explain any differences between the amounts reported on the application and amounts reported on the third-party verification in order to determine actual income. The file must be documented to explain the difference.

Section 4.4 Definition of Annual Income—What Is and Is Not Income

According to the Compliance Monitoring Regulations contained in Section 1.42-5 for the LIHTC Program, "Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability." **Please refer to the HUD Handbook 4350.3 for a complete listing and discussion of earned/unearned income and asset income.**

A. Annual Income is the amount of gross income anticipated to be received by all adult members of the household (18 years of age and older, including full-time students), and unearned income of minor children during the 12-month period following the date of certification or recertification.

The following are examples of income that are included in Annual Income. Also listed are specific types of income that are excluded from income. Generally, if a particular type of income is not specifically mentioned as being excluded, then it is included in Annual Income:

Annual Income includes, but is not limited to:

1. Interest, dividends and other income from net family assets (including income distributed from a non revocable trust);

2. (a) The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household including persons under the age of 18 who are the head, spouse or co-head). This includes salaries of adults received from a family-owned business;

   (b) Net income, salaries, and other amounts distributed from a business;

3. (a) The gross amount (before any deductions for Medicare, etc.) of periodic social security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support);

   Note: If the Social Security Administration is reducing a family's benefits to adjust for a prior overpayment, count the amount that is actually provided after the adjustment.

   Example: Mr. Jones's Social Security Payment of $475 per month is being reduced by $50 per month for a period of 6 months to make up for a prior overpayment. Count his Social Security income as $425 per month for the next 6 months and for the remaining 6 months as $475 per month.

4. The full amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (e.g. Black Lung Sick Benefits, Veterans Disability, Dependent Indemnity Compensation (widow of killed in action serviceman); Count the total amount of such amounts received. Do not reduce the amount by any amounts the individual previously paid into the account in order to receive the pension, annuity, or insurance policy.

5. Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits. These are payments that would have been paid periodically, but were paid in a lump sum because of circumstances such as processing delays;

Note: Delayed periodic payments of supplemental security benefits and social security benefits that are received in a lump sum are excluded from Annual Income.

6. Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay. Any payments that will begin during the next 12 months must be included;

7. Welfare assistance;

8. Alimony and child support received by the household. Alimony or child support **paid** by a member of the household is counted as income, even if it is garnished from wages;

Example:

Mr. Smith pays $200 per month in child support.
It is garnished from his monthly wages of $1,000. After the child support is deducted from his salary, he receives $800.
The owner must count $1,000 as Mr. Smith's monthly income.

In many cases, alimony and/or child support has been ordered but is not being paid. If this is the case, request tenant to provide a notarized statement attesting to the fact that support payments are not being received; the likelihood of support payments being received in the future, and that a reasonable effort has been made to collect the amount due.

9. Recurring monetary contributions or gifts regularly received from persons not living in the unit. Exclude from Annual Income recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit. Also exclude gifts of groceries;

10. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

11. Actual income distributed from trust funds that are not revocable by or under the control of any member on the tenant family. Note: Even if family assets exceed $5,000, use actual income distributed from the irrevocable trust.

B. Exclusions from Annual Income

1. Meals on wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act 1966, including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children (WIC);

2. Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

3. Grants or other amounts received specifically for medical expenses, including Medicare premiums paid by an outside source, set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income eligibility, out of pocket expenses for participation in publicly assisted programs (such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.);

4. The full amount of student financial assistance either paid directly to the student or to the educational institution. This includes scholarships, grants, fellowships and any other kind of student financial assistance. It does not matter what the assistance is actually used for;

5. The full amount of student financial assistance is excluded from annual income. Student financial assistance is broadly interpreted to include various scholarships, educational entitlements, grants, work-study programs, GI-Bill, and financial aid packages. Count only the first $480 in earnings of a full-time student over the age of 18 who is not the head, co-head, or spouse;

6. Unearned income not deemed as "student financial assistance", such as welfare and social security benefits, must be counted as part of household income for all household members, including those under the age of 18. Earnings from participation in Job Training Partnership Act (JTPA) programs are excluded from the total household income calculation for LIHTC purposes. Assets held by persons who are full-time students must be counted as part of household income;

7. Any household member over the age of 18 and any emancipated minor who is not the dependent of another person in the household (i.e. included on the federal tax return of that person) must be deemed a head of household, co-head or spouse for LIHTC purposes. The $480 amount does not apply to a head of household, co-head, or spouse. All income, including that which is earned and unearned, of such persons must be counted as part of household income;

Example:

Bill and Bob, both 19 years old, are friends who share an apartment in an LIHTC development. Bill is not a student and is employed full-time. Bob attends school full-time and works part-time at a local restaurant. Bill and Bob must be deemed as co-heads of household for LIHTC purposes and the entire amount of each of their income (except "student financial assistance") must be counted. Even though Bob is a full-time student, the $480 does not apply to him because he is a co-head of household.

8. Earnings in excess of $480 for each full-time student 18 years of age or older (excluding the head of household, co-head or spouse);

9. Adoption assistance payments in access of $480 per adopted child;

10. Loans such as personal or student loans (see HUD Handbook 4350.3 paragraph 3-21 on business loans which are not excluded);

11. Temporary, nonrecurring or sporadic income (e.g. gifts, census taker income from the Federal Bureau of the Census);

12. Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

13. Special pay to a household member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);

14. Amounts received under training programs funded by HUD;

15. Compensation from state or local employment training programs and training of a household as resident management staff. Amounts excluded under this provision must be received from employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance under the program by the state or local government;

16. A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in development. Such services may include, but not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time;

17. Reparation payments made by a foreign government pursuant to claims under the laws of that government by persons who persecuted during the Nazi era. Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era;

18. Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;

19. Payments received for the care of foster children or foster adults. (Foster adults are usually adults with disabilities who are unrelated to the tenant family and who are unable to live alone.);

20. Amounts received in behalf of someone not living in the unit as long as the amounts are (i) not inter-mingled with the family funds, and (ii) used solely to benefit the person not residing with the family. For such amounts to be excluded, the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the family and the amounts meet the conditions above;

Example:

Annie lives in a Section 42 development. Her sister, Ellen, lives with her mother in other housing in the same city. Annie has been designated as the Representative Payee for Ellen's SSI payments. The Social Security Administration designated Annie because her mother is a heroin addict. Annie makes sure that Ellen's SSI payments are used exclusively for Ellen.

Recurring child care payments paid directly to a provider by persons not living in the unit. This exclusion is based on a handbook interpretation of reimbursed child care expenses under the definition of adjusted income and its bearing on Annual Income. The regulations define child care expenses to include "amounts to be paid by the family for child care to the extent they are not reimbursed." This handbook interprets the regulations to mean that child care expenses that are reimbursed are not included as annual income.

21. Income Excluded by Federal Statute:

- The value of the allotment to an eligible household under the Food Stamp Act of 1977;
- Payments received under Domestic Volunteer Service Act 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);

- Interests of individual Indians in trust or restricted lands, and the first $2,000 per year of income received by individual Indians that is derived from trust or restricted lands;
- Payments received under the Alaska Native Claim Settlement Act (43 U.S.C. 1626(c)) received from a Native Corporation, Including:
- Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;
- A partnership interest;
- Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution of stock); and
- An interest in a settlement trust;
- Payments from certain sub marginal U.S. land held in trust for certain Indian tribes;
- Payments from disposal of funds of Grand River Bank of Ottawa Indians;
- The First $2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe;
- Payments, rebates or credits received under Federal Low-Income Home Energy Assistance Programs. Includes any winter differentials given to elderly;
- Payments received under programs funded in whole or in part under the Job training Partnership Act (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State Job Training Programs, career intern programs, Ameri- Corps;
- Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program);
- Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange, product liability litigation. M.D.L. No 386 (E.D.N.Y.;
- Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat. 1785);
- Any earned income tax credit to the extent it exceeds income tax liability. (26 U.S.C. 32(j));
- The value of any child care provider or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Childcare and Development Block Grant Act of 1990 (CCDBGA) (42 U.S.C. 9858q). Participating families may either pay a reduced amount based on a sliding fee scale or they may receive a certificate for childcare services;

This exclusion does not apply to amounts paid to a childcare provider for services paid through the CCDBGA.

C. Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with the verified income to determine the eligibility of a household.

Verification of assets is required. The asset information (total value and income to be derived) should be obtained at the time of application or recertification. The applicant will affirm that this information is correct by executing the Tenant Income Certification, Appendix D – Form 100.

Third party verification of assets is required when the combined value of assets exceeds $5,000. Effective October 11, 1994, an owner may satisfy the third party documentation requirement for a tenant's income from assets if the tenant submits to the owner a signed statement that the value of the combined assets is less than $5,000. The use of the IFA'S form entitled Under $5,000 Asset Certification, Appendix D – Form 105, is required for this procedure. However, the IFA recommends obtaining third party verification for asset verification. If a development is required to obtain third party verifications because of participation in another housing program (i.e., Section 8, RHS, etc.) then do not also use the Asset Certification.

> **Note:** The tenant's income from net household assets that are less than $5,000 must still be included in the calculation of the annual income amount when initially qualifying a household and upon recertification.

IRS Revenue Procedure 94-65 does not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement of third party asset verification.

F. Net Household Assets include:

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts use the current balance. For checking accounts, use the average balance for the last six months. A six-month average balance is optimal, but other average balances can be used if the six-month average is unavailable. Assets held in foreign countries are considered assets.

2. Revocable trusts. Include the cash value of any revocable trust available to the household.

3. Equity in rental property or other capital investment. Include the current fair market value less (a) any unpaid balance on any loans secured by the property; and (b) reasonable costs that would be incurred in selling the asset (i.e., penalties, broker fees, etc.). Note: If the person's main business is real estate, then count any income as business income. Do not count it as an asset and as business income.

4. Stocks, bonds, treasury bills, certificates of deposit, money market accounts.

5. Individual retirement and Keogh accounts. These are included because participation in such retirement savings accounts is voluntary and the holder has access to the funds, even though a penalty may be assessed. If the individual is withdrawing from the account, determine the amount of the asset by using the average balance for the previous 6 months. (Do not count withdrawals as income).

6. Retirement and pension funds. While the person is employed include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. At retirement, termination of employment or withdrawal, periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:

- If benefits will be received in a lump sum, include the lump sum receipt as an asset;
- If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset;
- If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset and treat the periodic payment as income.

- In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

7. Cash value of life insurance policies available to the individual before death (i.e., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

8. Personal property held as an investment. Include gems, jewelry, coin collections, and antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.

9. Lump sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution; settlements on insurance claims (including health and accident insurance, worker's compensation and personal or property losses); and any other amounts that are not intended as periodic payments.

10. A mortgage or deed of trust held by an applicant. (Land Contract)

- Payments on this type of asset are often received as one combined payment of principle and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage);
- To count the actual income for this asset, use the interest portion paid on the amortization schedule for the 12 month period following the certification;
- To count the imputed income for this asset, determine the asset value at the end of the 12 month period following the certification. Since this amount will continually be reduced by the principle portion paid during the previous year, the owner will have to determine this amount at each annual recertification.

Example:

Ms. Green sold her home and holds the mortgage for the buyer. The cash value of the mortgage is $60,000. The combined payment of principle and interest expected to be received for the upcoming year is $5,000. The amortization schedule breaks that payment into $2,000 in principle and $3,000 in interest. In completing the asset income calculations, the cash value of the asset is $60,000, and projected annual income from that asset is $3,000. In this example, the mortgage would be reduced to $58,000 after the first year. The owner would multiply this amount by the current passbook savings rate provided by HUD.

Documentation required: copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the individual; a letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next 12 months; amortization schedule showing interest for the 12 months following the date the purchaser intends taking occupancy. (A copy of the check(s) paid by the buyer to the tenant is NOT sufficient since appropriate breakdowns of interest and principal is not included.)

Household Assets do not Include:

Important: The owner does not compute income from any assets in this section.

1. Necessary personal property including clothing, furniture, cars, etc.;

2. Interests in Indian trust land;

3. Term life insurance policies (where there is not a cash value);

4. Equity in the cooperative unit in which the family lives;

5. Assets that are part of an active business (not including rental or properties that are held as investment and not a main occupation);

Example:

Mr. Higgins owns a copier service. None of the equipment he uses in the business is counted as an asset (e.g., the copier, FAX machines, etc.)

Example:

Ms. Mustard rents out a home that she lived in. The home is not an active business asset. Therefore, it is considered an asset, and the owner must determine the annual income Ms. Mustard receives from it.

6. Assets that are not effectively owned by the applicant. That is, when assets are held in an individual's name, **but** the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, **and** that other person is responsible for income taxes incurred on income generated by the assets;

Note: Non revocable trusts (irrevocable trusts) are not covered by this paragraph.

Example:

Mr. Tiffany and his son Robert have a bank account with both names on the account. Robert's name is on the account for the convenience of his father in case an emergency arises that would result in Robert's handling payments for his father.

Robert has not contributed to this asset, does not receive interest income from it, nor does he pay taxes on the interest earned. Therefore, Robert does not own the account. If Robert applies for an apartment, the owner should not count this account as his asset. The asset belongs to Mr. Tiffany and would be counted entirely as the father's asset should he apply.

7. Assets that are not accessible to the applicant and provide no income to the applicant. Non revocable trusts are not covered under this paragraph.

Example:

A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

Assets Owned Jointly

Assets owned by more than one person should be prorated according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among the owners.

Example:

Ms. Kennedy is a tax credit tenant. She and her daughter, Ms. Duncan, who lives 1200 miles away, have a joint savings account. Assume that in this example State law does not specify ownership. Even though either Mrs. Kennedy or Ms. Duncan could each withdraw the entire asset for her own use, count Ms. Kennedy's ownership as 50% of the account.

Determining the Value of Assets

In determining income from assets, owners must use the cash value of the asset; that is, the amount the family or household would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. Expenses, which may be deducted, include:

- Penalties for withdrawing funds before maturity;
- Broker/legal fees assessed to sell or convert the asset to cash;
- Settlement costs for real estate transactions;
- Loans on the asset (exception: income from a business).

For non-liquid assets, enough information should be collected to determine the current cash value – the net amount the family would receive if the asset were converted to cash.

Assets Converted to Trusts

A trust is generally considered a legal arrangement regulated by state law in which one party holds property for the benefit of another. A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trust assets are typically transferred to the beneficiary upon the death of the grantor. This Manual recognizes two types of trusts: revocable and non revocable (irrevocable):

1. Revocable Trusts:

- The grantor of a revocable trust can change this type of trust as often as s/he wishes. Therefore, the grantor has access to this asset at any time. The cash value of any revocable trust available to the household is considered an asset.

Example:

Mr. Porter establishes a trust of $30,000 in his daughter's name. The daughter is not a member of the household. Because it is revocable, Mr. Porter may modify the trust at any time and have access to it. For purposes of this example, the income is either reinvested into the trust or paid to his daughter. Treat this trust as a current asset. Even though Mr. Porter does not receive the income from this asset, he is required to report the cash value of the asset and the income the trust generates. Because it is still considered an asset owned by Mr. Porter, it is not considered an asset disposed of for less than fair market value.

2. Non revocable Trusts (Irrevocable Trusts)

- This is a trust agreement that allows an individual to permanently transfer assets during his/her lifetime to someone else;
- Trusts which are not revocable by or under the control of any member of the family are not considered assets;
- Instead, the regulation requires that the actual income distributed to the tenant family from such a trust be counted when determining Annual Income. (As with all income, this is the gross amount received before taxes or other deductions.);
- As long as the trust exists, any income distributed from the trust to the tenant family must be counted as income.

If there is no income distributed from the trust, then do not count any income from the trust (e.g. income from the trust is reinvested into the trust).

If an asset is disposed of for less than fair market value by being converted to a non revocable trust, assuming that no consideration is received or the consideration which is received is less than fair market value, then the owner must count such as asset for a period of two years.

- In addition, any actual income distributed from the non revocable trust must also be counted as income under paragraph 3 above. Therefore, for a two year period, the owner will consider this asset for the purpose of income computation and, in addition, count actual income distributed from the non revocable trust to the tenant family;
- Following the two year period, the owner will count only the actual income distributed from the trust to the family.

Assets Disposed of for less than Fair Market Value within Two Years of the Effective Date of the Certification/Recertification, including assets put into non revocable trusts:

- Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification;
- Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the family received by more than $1,000;
- In such cases, owners must include the **whole** difference between the cash value of the asset and the amounts received. If the difference is less than $1,000, ignore it.

Note: Use cash value if there are costs incurred in disposing of the asset.

Do consider:

- Assets disposed of for less than fair market value when they are placed into a non-revocable trust (assuming that no consideration is received or the consideration which is received is less than cash value.

  Note: Amounts received through settlements or judgments that are placed into non-revocable trusts on behalf of a member of the family are not considered as assets disposed of for less than fair market value.

  Example:

  Mr. and Mrs. Long's son, John, was injured in a car accident. He received a settlement of $300,000 to compensate him for injuries and future loss of income. The attorney handling the case set up a non revocable trust of $300,000 for the benefit of John. This trust is not under the control of any member of the tenant family. Count only the actual income distributed from the trust to John.

- Business assets that are no longer part of an active business that are disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business).

Do not consider assets disposed of for less than fair market value as a result of:

- Foreclosure;
- bankruptcy, or;
- divorce or separation agreement if the applicant or tenant receives important consideration not measurable in dollars.

401(k) as an Asset

Example:

If the applicant has a 401(k), list it as an asset, but first determine what the cash value of the asset would be if converted to cash. Normally, that will be 90% of the current value. It can be quite complicated depending upon the costs recognized in "converting the asset to cash." For example, if the 401(k) consists of a portfolio of 10 individual stocks, and the brokerage firm charges $29.95 per trade, the cost of converting that asset to cash would include the $299.50 in commission costs plus the 10% penalty for premature withdrawal of the funds from the tax-deferred savings plan prior to the age of 59-1/2. This would assume that the tax-deferred plan is not a Roth-IRA and the withdrawal would not be considered a "hardship withdrawal" to include: divorce, paying for student tuition, making a down payment on a home, or a multitude of other permissible reasons for being able to obtain money from the tax-deferred savings account without incurring the 10% penalty for premature withdrawal.

Of course, if the applicant is 70-1/2 years of age, this would bring

into consideration an entirely new set of circumstances because the IRS requires mandatory distributions from tax-deferred accounts beginning in the year the participant turns 70-1/2. Some IRA's are pre-tax and others are post-tax (regular IRA's vs Roth IRA's). If the income is tax-deferred until the owner of the retirement plan begins taking distributions from the account and the total assets exceed $5,000, your are going to have to apply the passbook rate against the total household's net assets to determine which is greater: actual income and assets or current net assets times the passbook rate.

Chapter 5

Determining Tenant Eligibility

Section 5.1 Determining Eligibility

At the present time, IRS Notice 88-80 (Appendix A) provides the only official guidance for section 42 tenant income compliance. The Notice states that determination of annual income of individual and area median gross income adjusted for family size must be made in a manner consistent with HUD Section 8 income definition and guidelines.

For guidance in the determination of tenant income, the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. The HUD Handbook 4350.3 and HUD notices may be obtained by calling 1-800-767-7468.

To determine if a family meets the income test, look at the sources of income as stated in 24 CFR 813.106 which is the test for HUD Section 8 program (IRS Notice 88-80). If the amounts from these sources when combined are equal to or less than the applicable Area Median Gross Income for the county for the household size, then the household is an income qualified household.

Please keep in mind that rental agents sometimes attempt to establish only that the applicant has sufficient income to support monthly rent payments. However, tax credit developments are both rent restricted and income restricted. Therefore, if a rental agent intends to include the applicant as an eligible tenant, **income from all required sources must be verified in the income calculation** even though not all of the income is necessary to support the rent payment.

> **Note:** Rural Development projects must use the Section 8 method of calculating income based on "annual income" not the Rural Development method of "adjusted annual income" for tax credit qualified tenants.

Income determination is based on the annualized adjusted gross income for a household or individual for the 12 months following signing of the rental agreement. Verification of all sources of current and anticipated income for all household members over the age of ~~17~~ 18 and unearned income of minor children must be obtained in order to establish that the income limits are not exceeded.

A. Owners must convert all verified incomes to annual amounts.

1. To annualize full-time employment, multiply:

   - Hourly wages by 2,080 hours for full-time employment with no overtime;
   - Semi-monthly wages by 24;
   - Weekly wages by 52;
   - Monthly wages by 12;
   - Bi-weekly wages by 26.

2. To annualize income from the other than full-time employment, multiply:

   - Hourly wages by the number of hours the individual is expected to work per week by 52;

- Average Weekly amounts by the number of weeks the individual is expected to work;
- Other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the individual expects to work.

Example 1:

$5 per hour X 25 hours per week X 52 weeks = $6,500.

Example 2: $130 per week X 45 weeks = $5,850.

Use an annual wage without additional calculations.

Example: If a teacher is paid $25,000 a year, use $25,000, whether the payments are made in 12 monthly Installments, 9 installments or some other payment schedule.

B. Sporadic or Irregular Income:

If an eligible tenant indicates that income might not be received for the full 12 months (e.g. unemployment insurance), the Owner should still determine an annual income as described below.

If an eligible tenant is in a seasonal line of work, for example, a job dependent on weather conditions such as roofing, and normally collects unemployment during the "off" months, both incomes are used for the appropriate number of months. For example, if an individual makes $1,200 a month, typically works 9 months per year and collects unemployment in the amount of $600 a month for the remaining 3 months, income is calculated as follows:

$1,200 x 9	=	$10,800	
$600 x 3	=	$1,800	
		$12,600	= Total Annualized Income

C. Unemployed Applicants

The income of unemployed applicants with regular income from any source, such as Social Security, Pension, recurring gifts, etc. must be verified as covered previously.

If applicant is currently unemployed and claiming zero (0) income, he/she must provide evidence of anticipated income for the certification year by executing a Certification of Zero Income (found in the Verification Section of the Compliance Manual).

If applicant is non-employed and intends to live off of assets only, a Certification of Zero Income Affidavit (Appendix D – form 108) must be submitted along with a clarification sheet.

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Please note that annual income is not the same as adjusted income. Annual income generally corresponds to gross income, with no adjustments (deductions) for childcare, medical expenses, dependents, etc. Adjusted income is used in some federal housing programs, such as Rural Housing Section 515, to determine the level of benefit provided to a household. However, it is not used in the LIHTC Program.

Use current circumstances to project income, unless verification forms indicate that an imminent change will occur.

Example of Anticipated Increase in Hourly Rate:

April 1 Certification Effective Date
$8.00 Current Hourly Rate
$8.50 New rate effective May 15

(40 hours per week X 52 weeks = 2080 hours per year)

April 1 through May 15 = 6 weeks
6 weeks X 40 hours = 240 hours
2,080 hours minus 240 hours = 1,840 hours

Annual Income is calculated as follows:

240 hours X 8.00 = $ 1,920
1840 hours X $8.50 = $15,640
Annual Income $17,560

If a family indicates that income might not be received for the full 12 months (e.g. unemployment insurance benefit is expected to terminate), the owner should still annualize the income.

When an employer gives a range of hours for number of hours worked, it is recommended that the owner take a conservative approach and use the highest number in the range for income calculations. It is not recommended to take an average.

Example:

John works 25 –30 hours per week and
makes $8.25 per hour. to annualize his hours:

30 hours X 52 weeks = $1,560 hours per year
1,560 hours X $8.25 = $12, 870 annual income.

D. Imputed Income From Assets

If the net family assets exceed $5,000, Annual Income must include the **greater** of:

The actual income from the assets, or

Imputed income from assets. Owners must impute income by multiplying total net family assets by the passbook rate specified by HUD.

Example:

Type of Asset	Cash Value of Asset	Actual Income Per Year
Checking Account	$ 550	0
Savings Account	3,000	300
Certificate of Deposit	12,000	480
Property	32,000	0
Totals	$47,550	$780

Since the total assets in this example exceed $5,000, the owner must calculate the imputed income. In this example, the owner would multiply the Net Family Assets of $47,550 by .02, totaling $951. The owner would then compare the $780(actual income from assets) to the $951 (imputed income from assets) and include the greater of the two as part of the family's gross annual income. In this example, the imputed income of $951 is greater than the actual income of $780.

E. Computing the Total Household Income (Annual Income)

After all income and asset information has been obtained and computed for a household, all qualified sources of income are added together to determine the total annual income.
Annual Income has two components: Earned/Unearned income and Asset income.

Total Income from all Sources = Annual Income

Earned/Unearned Income	+	Income From assets	=	Annual Income

In order for the household to initially qualify for a tax credit unit, the total household income must be less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification. If the total household income is greater than the maximum allowable qualifying income, the household cannot be certified for a tax credit unit.

Section 5.2 FORMS

Forms to Verify Income

The forms listed in Appendix D are provided to assist you in qualifying eligible tenants. The tenant must sign forms requiring tenant signatures. Information must be completed prior to sending the form to an employer or other income source. Completed and returned verifications should be attached to the Tenant Income Certification. The forms are provided as a tool for you. Should there be any missing information on these documents, you may add to the form as an exhibit.

Authorization to Obtain Information (Release of Information)

In working with tenants, the owner/manager warrants compliance with applicable data privacy laws and regulations. The Authorization to Obtain Information Form is attached in Appendix D-form 138) for your use.

Section 5.3 Full-Time Student Verification

The IFA requires that management agents use the Student Certification Form (Appendix D-form 103) to assist in the verification and qualification of each full-time student applying for residency for a low-income tax credit unit.

Specific information must be obtained regarding full-time student verifications. Agents may develop their own forms, but each full-time student listed as a qualified tax credit applicant must have a third party verification located in the tenant file to prove qualification status.

Section 5.4 Initial Tenant Income Certification Guidelines

The effective date of a certification cannot be arbitrarily assigned. It is that date on which all the necessary information to substantiate the household income amount has been obtained.

Once all the income and asset information has been obtained and computed, management personnel must prepare a Tenant Income Certification (Appendix D-form 100) for each tenant. The form is a legal document which when fully executed, qualifies the applicants to live in the set-aside units in the project. It is not a rental application.

The following recommendations apply:

- Management should instruct the prospective tenant(s) to sign the Tenant Income Certification exactly as the name appears on the form. The tenant's legal name should be given and used just as it will appear on the lease;
- The tenant income certification must be signed by the tenant and by the owner or owner's agent at initial move-in and upon annual recertification. Recertification is at least once every 365 days from a household's last effective income certification date. The effective date of the initial certification should be the move-in date. Annual recertifications should be effective on the anniversary of the effective date of the previous certification. It is the IFA's recommendation that the Tenant Income Certification be signed no earlier than 30 days prior to the effective date and no later than the effective date. However, you may sign before 30 days;
- A Tenant Income Certification that is completed late, either after the date the household occupied the unit, or after the anniversary date of the previous certification, will cause the unit to be considered out of compliance until a proper certification or recertification is performed. IFA strongly advises owners and managers to certify and recertify on a timely basis.

Note: Supporting documentation (income verification, employment verification, child support affidavit, etc.) must be reviewed and added to the file each year.

No one may live in a low-income set-aside unit in the development unless he/she is certified and under lease.

Section 5.5 Annual and Interim Income Recertification Requirements

The IRS states that the owner must perform, on an annual basis, an income certification for each low-income household and receive documentation to support that certification (26 C.F.R.§1.42-5 April 1, 1994). Upon receipt of all verifications, owners or managers should determine if the unit still qualifies for participation in the Tax Credit Program. All verifications should be reviewed and calculations made as necessary.

A. A recertification of income must be made annually.

The IFA monitors recertification of income 365 days from the later of the move-in date or the one-year anniversary of the previous certification.

B. If a new member is added to a qualifying household within 6 months of the initial move-in the following steps must be taken:

1. The prospective tenant must complete an application for residency and verifications of income and assets must be completed; (this does not include a birth or death in the household.)

2. The new member's income must be included as part of the household's previously certified income. The combined household income must be compared to the maximum allowable income limit in effect at the time and based on actual household size; and

3. If the combined household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or development will be in violation of Section 42 requirements by adding the new tenant.

Note: The above is not an IRS Ruling. The decision above has been agreed to in Principle with the other participating state agencies .

Example*:*

1 person household income limit = $15,000
2 person household income limit = $17,000
140% of 2 person income limit = $23,800

Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification was $10,500. Eight months after Tenant A moved into the project, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit in two months. At the time of annual recertification, Tenant B is certified as earning $12,900. The household's combined income will be $23,400. The household will still qualify, since it is below the 140% limit of $23,800. If the combined income of Tenant A and B would exceed 140% of the current income limit, the **next available unit rule** may go into effect.

Also note the following in regard to recertification requirements:

C. If all tenants in a previously qualified household become full-time students at any time, the household can only be considered as a qualified tax credit household if at least one of the student criteria is met. This eligibility determination must be made immediately upon the tenant becoming a full-time student and cannot be delayed until a recertification of the household is due.

D. In the event that a tenant moves into a building prior to the placed-in-service date of the building (as shown on the project's IRS Form(s) 8609), and the verification of the tenant's income was performed more than 90 days prior to the placed-in-service date, the tenant must be recertified on the placed-in-service date.

Section 5.6 Adjustments to Rent, Utility Allowance, Subsidy

Any changes to rent, utility allowances, and rent subsidies occurring between recertification dates must be reported to the IFA at the same time initial and annual reports are due each year.

Section 5.7 Procedures for Recertification

- Notify tenant that recertification is due;
- Interview tenant to obtain information regarding the household's income, assets and family composition;
- Verify each tenant's income and assets. Supporting documentation (third-party income verification, employment verification, child support affidavit, etc.) must be reviewed and added to the Tenant/Unit File each year;
- Management agent should complete a Tenant Income Certification. The management agent and the tenant must sign the TIC;
- Management agent should review the tenant's checklist, income and asset verifications, and the TIC to determine the tenant's eligibility for an LIHTC unit;
- The renewal lease may be executed at the time the TIC is signed and approved;
- Notify tenants of any rent change resulting from the change in income. (RHS & HOME Properties)

Section 5. 8 Annual Recertification Waiver

The IFA has chosen to continue requiring an annual recertification of tenant income in 100 percent Housing Tax Credit developments. An Annual Recertification Waiver is **not** an option at this time.

Section 5.9 Miscellaneous Rules Governing Low-Income Eligibility of Units

A. Live-in Care Attendants: A live-in care attendant for a tax credit tenant should not be included as a household member for determining the eligible income and rent limits. The need for a live-in care attendant must be verified. The live-in care attendant must abide by the lease agreement, but has no survivorship rights to the apartment. If the qualified tenant vacates the unit, the attendant must vacate as well. However, if an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the program.

B. Unborn/Adoptive Children: A pregnant woman or a household in the process of adopting a child should include the additional person(s) for the purposes of determining the maximum allowable income. In these cases, management must obtain documentation giving evidence of pregnancy or adoption. This may include a letter from a doctor, in the case of pregnancy. In the case of adoption, adoption papers will suffice.

C. Section 8 Applicants: Omnibus Budget Reconciliation Act of 1993 prohibits owners from refusing to lease to a prospective tenant solely on the fact that the applicant holds a Section 8 voucher or certificate.

D. Next Available Unit Rule: An eligible tenant's income following initial certification can increase to 140% of the maximum income level. A tenant whose income exceeds the maximum income level by more than 140% is technically no longer an eligible tenant. However, the development will remain in compliance as long as the next available unit or any available unit of comparable or smaller size in the same building is made available to an eligible tenant at the qualifying rent. If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as housing tax credit units; thus, comparably sized or larger over-income units would lose their status as housing tax credit units.

Section 5.10 Lease and Rent Limits

All residents occupying set-aside units must be certified and under lease. Leasing guidelines are listed below:

The Lease

All residents occupying tax credit units must be certified and under lease no later than the time a tenant moves into the unit. IFA does not have a required use of any particular lease specifically for the LIHTC program. Leasing guidelines are listed below.

A. At a minimum, the lease should include (but is not limited to):

1. The legal name of all parties to the agreement and all other occupants.
2. A description of the unit to be rented.
3. The date the lease becomes effective.
4. The term of the lease.
5. The rental amount plus any other amounts paid by the tenant for parking, pets, a/c, etc.
6. The use of the premises.
7. The rights and obligations of the parties, including the obligation of the tenant to certify annually (or more frequently as required) to income as defined herein;
8. Language, which addresses income decrease, utility allowance increase/decrease, income limit increase, basic rent changes (in RHS or 236 projects), family composition change or any other change and its impact on the tenant's rent.

B. Rents on the tax credit units may not exceed the amounts allowed by Section 42 of the Code.

C. There must be an initial lease term of at least 6 months on all tax credit units (except for housing for the homeless and single room occupancy). The six-month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period.

D. It is important for the lease to reflect the correct date of move-in, or the date the tenant takes possession of the unit.

E. Single room occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas.

Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

- SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
- SRO units intended as permanent housing and not receiving McKinney Act assistance;
- SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

Section 5.11 Unit Transfer

When a tenant wishes to transfer to another unit in the same building, the status of the unit the household will occupy is transferred to the unit the household vacated. For transfers from one building to another, the household must qualify as a new move-in and the initial certification process must be completed.

Section 5.12 Qualifying Section 8 Tenants for LIHTC Units

An owner/management agent may substitute a completed, executed copy of the HUD 50058 or HUD 50059 form and supplemental worksheet (detailing asset calculations) for the Tenant Income Certification (Appendix D-form 100) and the income verification procedures outlined in Sections 3 & 4 of this manual when certifying the eligibility of Section 8 certificate and/or voucher holders, and tenants in Section 8 project-based developments. The HUD forms should be obtained directly from the Public Housing Authority by the owner/management agent. If the HUD 50058 form is/was prepared in-house (by the owner/management agent or the on-site leasing staff), copies of the appropriate third-party verifications and other back-up documentation must be contained in the tenant file.

The following modification must be made to the HUD forms:

> The street address and BIN number of the building in which the unit is located must be written or typed at the top of each form.

The HUD 50058 or HUD 50059 with supplemental asset calculation worksheet replaces only the items outlined in the paragraph above. No other substitution of forms or certification procedures will be permitted. All other initial certification and recertification procedures outlined throughout this manual must be followed. All of the annual certification requirements, outlined, must be completed and submitted to the IFA as described. All other tax credit policies and guidelines outlined in this manual and in federal and state regulations apply to Section 8 projects, except as noted therein.

The Tenant/Unit File must contain a HUD 50058 or HUD 50059 for every interim and annual recertification. (See interim requirements for documentation needed – Section 5.5). Supporting documentation (which includes copies of third-party verifications) must be included if deemed necessary to the IFA. The Tenant/Unit file must contain all of the other documentation outlined including, but not limited to, an application and lease agreement.

To obtain the HUD 50058 or HUD 50059 and worksheet from the Public Housing Authority, the owner/management agent and the tenant/prospective resident should complete an Authorization to Release Information for Section 8 Participants for each initial certification and for each interim or annual recertification.

If a HUD 50058 or HUD 50059 or updates cannot be obtained by the owner/management agent or the tenant discontinues participation in the Section 8 program, all of the initial certification and/or interim and annual recertification procedures outlined in this manual must be followed.

Section 5.13 Using the HUD 50058 and HUD 50059 to Qualify Tenants for Low Income Units

Use line 8a of the HUD 50058 (10/97 version) or line 31 from the HUD 50059 to compare to the appropriate area median gross income limit as adjusted for household size. Tax credit income limits are based on the gross annual income of a household, not adjusted annual income.

Use the line identifying the Total Tenant Payment to compare to the maximum allowable tax credit rent. Tax credit rent limits are based on the tenant-paid portion of the rent and tenant-paid utilities (the utility allowance) and do not include any subsidy payments.

Section 5.14 Qualifying Tenants in RHS Projects for LIHTC Units

An owner/management agent of a project financed by the Rural Housing Services (RHS) and Community Development (formerly Farmers Home Administration and sometimes referred to as Rural Development or Rural Economic and Community Development) may substitute the Tenant Certification (FMHA 1944-8) form for the Certification of Tenant Eligibility form to certify and/or recertify the eligibility of LIHTC tenants. The substituting of the FMHA 1944-8 will be valid only with the following attachments/modifications:

A. A worksheet calculating net family assets, detailing:

1. For each type of asset, the following information:

    - The type of asset (cash, real estate property, stocks, etc.);
    - The cash value of the asset;
    - The actual yearly income from the asset;
    - The combined total cash value of all assets;
    - The combined total actual yearly income from all assets.

2. For households with assets with total cash value exceeding $5,000, the imputed income from assets based on the HUD approved passbook rate.

B. The following written or typed at the top of the FMHA 1944-8:

    - The number of bedrooms in the unit;
    - The street address and BIN number of the building in which the unit is located; and the date the tenant moved-in to the particular unit.

The FMHA 1944-8 replaces only the Tenant Income Certification (Appendix D-form 100). No other substitute of forms or certification procedures will be permitted. All other initial certification and recertification procedures outlined throughout this manual must be followed. All of the annual certification requirements must be completed and submitted to the IFA as described. All other tax credit policies and guidelines outlined in this manual and in federal and state regulations apply to RHS projects.

The Tenant/Unit File must contain a FMHA 1944-8 for the initial certification and an updated FMHA 1944-8 for every interim and annual recertification. The Tenant/Unit File must contain all of the other documentation outlined in Sections 3 & 4, including, but not limited to, third-party verifications and lease agreement.

If a FMHA form 1944-8 is not completed, all of the initial certification and/or interim and annual recertification requirements and procedures outlined must be followed.

Section 5.15 Using the RHS Forms to Determine Rent and Income

Use line 31, 17f, from the FMHA 1944-8 to compare to the appropriate area median gross income limit as adjusted for household size. Tax credit income limits are based on a household's gross annual income, not adjusted annual income.

Use line 32 or line 35 (whichever is applicable to the tenant), Final Net Tenant Contribution, to compare to the maximum allowable tax credit rent. Tax credit rents are based on the tenant-paid portion of the rent and tenant-paid utilities and do not include any subsidy payments.

Chapter 6

Guidelines for Correction of Noncompliance

The following is a list of noncompliance events as they appear on IRS Form 8823, the State Agencies Report of noncompliance. Some examples of events of noncompliance, the related correction possibilities, and supporting evidence that an owner should obtain to document the correction have been identified. The IFA will refer to these guidelines to recommend and determine correction. Please note that the guidelines (1) are not all inclusive, the facts and circumstances surrounding each event may be such that the examples and/or guidelines do not fully cover each event, (2) are subject to change at any time, (3) have been agreed to in principle with the other participating state agencies, but are subject to state interpretation and, (4) have been reviewed by officials from the Internal Revenue Service and been given verbal approval as to their reasonableness.

The guidelines are for the IFA'S use in determining and reporting correction. The IFA does not imply a guaranty that the IRS will agree with its decisions.

According to the Internal Revenue Service, the consequences of having units out of compliance in the first year of the credit period, even if corrected, will be more severe.

A. HOUSEHOLD INCOME ABOVE INCOME LIMIT UPON INITIAL OCCUPANCY

Example: Owner does not properly calculate annual household income (didn't include a raise, overtime, bonus, assets, etc.) and when reviewed, a correct calculation is done which determines that the household was not income eligible at move-in.

Example: Owner has calculated annual household income correctly, but the household is over income. Perhaps owner does or doesn't realize the income is too high. Unit is rent-restricted and owner is properly recertifying the household. However, owner is counting this unit as a tax credit unit.

Correction Possibilities: Certify or Recertify the household and if currently income eligible under move-in income guidelines, then consider it corrected.

If not income eligible then owner must recapture credit for the unit to the date they moved in, non renew the lease for the ineligible household and move an eligible household in as soon as possible. Copies of supporting documentation will also need to be submitted.

Evidence of Correction: Copies of the recertification paperwork including application/ questionnaire, verifications and tenant certification showing eligibility. If not eligible, then copy of notice of non-renewal and move-in certification paperwork for new tenant.

Date of Correction: Date of recertification or move-in date of eligible household.

B. MAJOR VIOLATIONS OF HEALTH, SAFETY, AND BUILDING CODES

Example: Structural & roof problems, blockage of fire exits, elevators not functioning properly, smoke detectors, or sprinklers not functioning, pest infestation, serious electrical, heating or plumbing problems, common area safety lighting problems.

Correction Possibilities: Documentation that work has been completed -- work orders, receipts, copies of inspections, pictures with dates**.** If unusual, state agency inspectors will refer to architectural staff or other professionals for recommendations.

Evidence of correction: Letter from architect; city inspector; elevator inspector; fire marshal; pest control company; health department; etc., that problem has been corrected.

Date of Correction: Date of Letter.

C. MINOR VIOLATIONS OF HEALTH, SAFETY, AND BUILDING CODES

Example: Common area lights need replacement, items stored in improper locations, snow removal not done promptly, walkways and parking lots are not maintained, security doors not functioning properly.

Correction Possibilities: Documentation that work has been completed -- work orders, receipts, copies of inspections, pictures with dates.

Evidence of correction: Letter from owner or management company with photos, if needed, detailing how and when correction was made; receipts, work orders.

Date of Correction: Date of Letter.

D. OWNER FAILED TO SUBMIT ANNUAL CERTIFICATION

Example: Owner fails to submit all required documentation as part of the annual certification.

Correction Possibility: Upon notification from state agency, owner submits all requested documentation.

Evidence of correction: Required submissions.

Correction Date: Date received at Agency.

E. CHANGES IN ELIGIBLE BASIS

Example: Common areas and/or rental units become commercial.

Example: Fees are charged for facilities such as garages and storage lockers.

Correction Possibilities:

1. Owner must reduce eligible basis and credit amount.
2. Owner must document that prior basis has been met.
3. Owner stops charging tenants for the use of previously gratuitous amenities which should have been available on a comparable basis & provided rebates for previous charges. However, it would be reported to the IRS for a determination of recapture/recision of credit as the eligible or qualified basis would have decreased, along with the allowable tax credit for that period.

Evidence of correction: Letter from owner indicating reduction in basis and credit. Documentation that prior basis has been met. State agency would recommend to owner that it reduce basis and recapture credits. No evidence of this would be collected by the state agency. For owners who do not wish to reduce basis, we would collect a list of tenants who were over charged and the amounts refunded.

Date of Correction: For 1 and 3 above, no correction date would be provided. For above, correction date is date of letter or receipt of documentation.

F. DEVELOPMENT FAILED TO MEET MINIMUM SET-ASIDE REQUIREMENT (20/50, 40/60 Test)

Example: Owner did not lease minimum amount of units by the end of the first year of the credit period.

Example: Upon inspection, it is determined that a large number of units are not in compliance.

Correction: The first example is a non-correctable situation. The IFA will issue notice of noncompliance and indicate that the project will no longer participate in the tax credit program.

In the second example, assuming owner met the minimum set aside in the first year of the credit period, owner must recertify households to determine current eligibility, move out those that do not qualify, and fill those units with qualified households until at least the minimum set aside is restored.
Owner should recapture credit claimed for non-eligible households.

Evidence of correction: Due to the serious nature, the IFA should re-inspect.

G. GROSS RENTS EXCEED TAX CREDIT LIMITS

Example: Owner has been charging rents in excess of program limits.

Example: Utility allowances have increased and owner has not decreased the rent charged to tenants within 90 days.

Correction: Owners must refund excess to tenants.

Evidence of correction: Copies of canceled checks, proof of repayment, current rent roll and utility allowance showing correct charges to tenants and list of tenants who were over charged and the amounts refunded.

Date of Correction: Date of receipt of documentation. If all affected tenants are fully refunded, the state may determine that this is a non-event and no violation would be reported to the IRS.

H. DEVELOPMENT NOT AVAILABLE TO THE GENERAL PUBLIC

Example: Court of final HUD administrative determination of:

1. Violations of the Fair Housing Act. Discrimination based on race, color, religion sex, national origin, familial status and/or disability or
2. Nonconformance with design and construction requirements for housing built for first occupancy after 3/13/91, in order to provide accessible housing for individuals with disabilities.

Correction: Owner should comply with correction requirements as directed by the court or HUD. Unit(s) in question will be considered out of compliance until the court or HUD determines the correction to be complete. The state agency would advise owner to recapture and/or not claim further credit.

Evidence of correction: Evidence from court or HUD indicating completion of required correction(s).

I. HOUSEHOLD INCOME INCREASED ABOVE INCOME LIMIT AND AN AVAILABLE UNIT WAS RENTED TO MARKET RATE TENANT

Example: Household timely recertified and over 140% of income limit. A comparable or smaller unit was rented to an unqualified household.

Example: Recertification was performed late and household was determined to be over 140% of applicable limit. Owner has rented comparable unit(s) to market rate household(s) during the time the recertification should have been done and the time it was actually done. Upon recertification of the over income household, owner ceases to rent market rate units.

Correction Possibility: Move-out market rate household(s) and replace with eligible household.

In the first example, the low income status of all households over the 140% income level is lost. In the second example, the low income status of all over-income households would be lost from the time the recertification should have been performed.

Evidence of correction: The IFA would advise the IRS that the available unit rule was violated. Possible correction date would be provided on form 8823. This would be handled on a case-by-case basis.

J. DEVELOPMENT IS NO LONGER IN COMPLIANCE AND IS NO LONGER PARTICIPATING IN THE LOW INCOME HOUSING TAX CREDIT PROGRAM

Example: Property foreclosed*, property without extended use agreement no longer participating in program, no compliance documentation submitted to Agency, numerous compliance violations cannot be corrected or owner will not correct.

> *Note: For projects which have a Land Use Restrictive Covenant, there is a three (3) year time period following the foreclosure in which the owner is precluded from evicting tenants for other than good cause and in which the owner must continue to charge rents which are at or below the applicable rent limits. The state monitoring agency may require documentation of continuing compliance during this three year period.

Correction of Possibility: No Correction.

Documentation Required: 1. Foreclosure documentation and letter from bank or new owner stating project will or will not participate in the tax credit program.
2. Letter from owner withdrawing from participation.
3. IFA's compliance files showing violations and failure to correct.

K. OWNER FAILED TO EXECUTE AND RECORD EXTENED USE AGREEMENT WITHIN TIME PRESCRIBED

Correction Possibility: Record extended use agreement.

Evidence of Correction: Recorded extended-use agreement is received by Agency.

L. LOW INCOME UNITS OCCUPIED BY NON QUALIFIED FULL TIME STUDENTS

Example: A formerly qualified household becomes ineligible due to becoming full-time Student(s).
Example: No information on application regarding student status, i.e. not asked or not filled in by tenant.

Correction Possibilities: 1. Consider the household to be market rate and recapture any previously claimed credit.
2. Move ineligible household and fill unit with a qualified household.
3. Tenant(s) sign a statement indicating they are not students.

Evidence of Correction: 1. Letter to state agency indicating unit has been considered market rate.
2. Lease termination notice and evidence that a qualified household now
3. Signed statement indicating not all household members are full time students or Evidence of student exemption.

Date of Correction: For correction 1, no correction date would be provided. For correction 2, the date on which the requested documentation is received. Correction for 3 above, would be considered a clarification and no report to IRS would be necessary.

M. THE OWNER FAILED TO MAINTAIN OR PROVIDE TENANT INCOME CERTIFICATION AND DOCUMENTATION

Example: Tenant income certification, lease and/or other documentation were not signed prior to move-in, but are in the file and household has been determined to be eligible.
Example: Above documentation is in the file, but the following deficiencies exist: a rental application is not sufficiently detailed to disclose all sources of income and/or assets and the IFA'S Compliance Staff cannot determine that a household qualifies, not all sources of income were verified, not all sources of assets were verified, calculation of income and/or assets were done incorrectly (but not causing the household to go over income), other IFA required forms such as Certification of Adjusted Income are not in the file, verifications are deficient because they are older than 90 days, have not been fully completed by third party source and no follow-up has been documented, etc.

Correction Possibilities: For the first example, the unit is out of compliance from move-in date of complete certification.
For the second example, the IFA should decided if documentation is sufficient to determine household's eligibility.
A) Owner advised to correct technical deficiencies.
B) If insufficient documentation: household must be recertified. If household qualifies, then this would be the correction.
C) If household over income, credit is recaptured from the time of move-in until an eligible household occupies the unit**.**

Evidence of correction: 1. When there is insufficient documentation, a copy of the full recertification including application, verification, certification.
2. For over-income household, a copy of new move-in documentation for a qualified household in that unit.

N. REGARDING RECERTIFICATIONS NOT PERFORMED WITHIN A 12 MONTH PERIOD

Example: recertification was performed late and household is below 140%.

Example: recertification was performed late and household is above 140%.

Correction Possibilities: For the first example, there should be no correction required. Owner should be advised of the late recert and procedures implemented to ensure timely recertifications. Correction took place when recertification was completed late.

For the second example, owner should review the move-ins from the time the recert should have been done to the time it was actually performed to determine if any units were rented to non-eligible households. If no units were rented to market rate tenants, then the available unit rule should be examined to determine if more units need to be rented to eligible households. If a unit was rented to a market rate household, then all units over the 140% income limit would have their tax credits recaptured.

Evidence of correction: A list of move-in for the required time period including move-in income information.

O. OWNER DID NOT PROPERLY CALCULATE UTILITY ALLOWANCE

Example: Incorrect utility allowance used.

Correction Possibility: Owner must recalculate utility allowance and rent to determine if tenants were overcharged. Refund given to overcharged tenants.

Evidence of correction: Documentation submitted to Agency: Correct utility allowance, current rent roll with correct utility allowance, canceled checks and list of overcharged tenants with amounts refunded.

P. OWNER HAS FAILED TO RESPOND TO AGENCY REQUESTS FOR MONITORING REVIEWS AND FEES

Example:
1. Continual postponements of monitoring visits
2. Refusal to allow monitoring visit
3. Inability to contact owner or manager
4. Not receiving monitoring fees

Correction: Monitoring visit is performed and corrected on that date. Fees received.
Evidence of correction: Complete file and/or site inspection. Fees.

Q. LOW INCOME UNITS USED ON A TRANSIENT BASIS

Example: Less than a six-month lease or no lease on file, but tenant has resided in unit for six months or longer.

Example: Units have a six-month lease, but a significant number of households move out prior to the expiration of their six month lease.

Correction Possibility:
1. No correction required for the first example.
2. Require owner to explain why households with less than 6 month occupancy are not completing lease term, and implement written policy so owner and tenants are not easily able to break lease.

Evidence of correction: Copy of revised lease and addendum. Written explanation of less than 6 month occupancy and/or written policy regarding not allowing tenant to terminate a lease prior to its expiration for other than a lease violation by owner.

Chapter 7

Other Considerations

A. Physical Requirements of Buildings

Qualified units rented to, or reserved for, eligible tenants:

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the project; and
- Cannot be geographically segregated from other units in the project.

Units intended for eligible tenants must be comparable in size, location, and quality to those rented to other tenants. In the event a resident unit in a project which is not rented to an eligible tenant is above the average quality standards of the units rented to eligible tenants, then the basis in the project which is used to determine the amount of tax credits must be reduced by the portion which is attributed to the excess costs of the above standard units.

B. Discrimination Prohibited in Development

Neither the owner nor the owner's agents shall discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, marital status, age, or handicap. Additionally, owners cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws.

C. General Requirements

Under program requirement, tax credit units must be available for use by the general public. Owners are allowed to establish preference for certain population groups (e.g. homeless individuals, persons with disabilities, etc.). These preferences, however, must not violate HUD's anti-discrimination policies.

D. General Occupancy Guidelines/Household Size

There are no current tax credit requirements governing minimum or maximum household size for a particular unit; however, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. FMHA regulations).

The IFA advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, and municipal code that may establish a maximum or minimum number of persons per unit.

E. Allowable Fees and Charges

Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits, and/or credit deposits are permissible. However, an eligible tenant cannot be charged a fee for work involved in completing the additional forms or documentation required by the LIHTC Program, such as the Certification of Tenant Eligibility. If after occupying a unit, an eligible tenant cannot pay the rent, the owner has the same legal rights in dealing with the LIHTC tenant as with any other tenant.

F. Conflicts with other Government-Funded Housing Programs

Management must be aware of the difference between RHS (formerly called FMHA) rent rules and those of the LIHTC Program that could result in proper RHS rents but incorrect LIHTC rents. If the LIHTC maximum allowable rent is less than the overage, the overage cannot be charged.

> **NOTE:** For credit allocations beginning in 1991, the overage can be charged for amounts that will be returned to RHS. This provision is not retroactive to projects receiving credit allocations from 1987 through 1990.

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If a rent amount that is greater than maximum allowable LIHTC rent is charged to a tenant, management may either rebate the difference between the basic rent and LIHTC rent to the tenant, or discount that amount in the current lease.

> **NOTE:** A lease addendum must be executed indicating the appropriate discount and the difference between the government (HUD or RHS) rental and the LIHTC amounts. If a discount is not offered, management must maintain adequate documentation of the rebate.

GLOSSARY

- **4% Annual Credit**

The approximate applicable percentage used to calculate the annual amount of tax credit given for the cost of a new building or substantial rehabilitation built with a federal subsidy or the cost of buying an existing building for which substantial rehabilitation expenditures also are incurred with a federal subsidy. The actual applicable percentage is set each month by the Department of Treasury based on current interest rates. This percentage is then multiplied by the qualified basis to determine the actual annual tax credits. In this case, the aggregate amount of tax credits would have a present value of 30% of the qualified basis.

- **9 % Annual Credit**

The approximate applicable percentage used to calculate the annual amount of tax credits given for the cost of a new building or substantial rehabilitation built without federal subsidy. The actual applicable percentage is set each month by the Department of Treasury based on current interest rates. This percentage is then multiplied by the qualified basis to determine the actual annual tax credits. In this case, the aggregate amount of tax credits would have a present value of 70% of the qualified basis.

- **20/50 Test**

Minimum set-aside requirements in which at least 20% of a development's units must be set aside for households whose incomes are less than or equal to 50% of applicable are median income.

- **40/60 Test**

Minimum set-aside requirements in which at least 40% of a development's units must be set aside for households whose incomes are less than or equal to 60% of applicable area median income.

- **Allocation**

The process whereby a state housing agency issues an owner of rental housing the authority to deduct a specific amount of tax credits each year from his/her personal tax liability.

- **Annual Income**

The **gross** amount (before deductions) of contributions **ALL** family members anticipate they will receive from **ALL** sources, including earned income, unearned income, and income from assets, in the 12-month period following the effective date of certification (or recertification) of income.

- **Annualized Income**

Specific methods used to convert employment and other income amounts to a projected annual income.

Example:

An applicant who makes $5.00 an hour and works full-time (with no over-time) will have annual income as follows:

$5.00/hour x 40 hours x 52 weeks = $10,400

- **Applicable Fraction**

The actual percentage of units **in a building** that an owner has identified will be occupied by qualified Section 42 residents and which determines the **maximum** percentage of tax credits which can be claimed for that building.

The applicable fraction is the **lessor** of the number of qualified units expressed as a percentage of total units, or the percentage of square feet in the qualified units.

Example:

If an owner designated 100% as the building's applicable fraction when he/she applied for tax credits, the owner can claim 100% of the credits allocated only if 100% of the units in the building are qualified under Section 42 (and provided the total development still meets the minimum set-aside requirement).

Note: The applicable fraction, which is established at the end of the first year tax credits, are claimed becomes the **maximum** percentage of units which can qualify throughout the ten years of the credit period. In addition, each year if the percentage of qualified units in a building decrease below the maximum, then the percentage of tax credits which can be claimed on the building also decreases for that year.

**** A fraction that is used in calculating the amount of tax credit an owner can claim for a building, determined by the number of units or square footage occupied by qualifying low-income residents. The applicable fraction is the lesser of:**

The number of low-income residential units divided by the number of all residential rental units in the building (the unit fraction), OR
The total square footage of the low-income residential units divided by the total square footage of all the residential rental units in the building (the floor space fraction)

- **Applicable Percentage**

The type of annual credits (4% or 9%) that was allocated.

- **Application/Tenant**

The first stage for the Section 42 tenant certification process where accurate and complete income asset information, and other necessary personal data is collected from **ALL** family members and **reviewed with applicants** by a property manager or owner.

- **BIN (Building Identification No.)**

A unique number that is assigned to each Section 42 project at the time of application and can provide valuable information relative to the property.

Example: IA99-00001

IA indicates the project is in Iowa; credits were applied for in 1999 and it was the first application received in 1999 (001). (Specific amounts of tax credits are issued for each building).

- **Certification/Tenant**

The process **ALL** Section 42 prospective applicants and current residents must complete to prove that they are eligible to reside in the unit. This process includes the tenant(s) reporting all income and asset information on an application, appropriate verification and documentation of reported information by management, and finally a **Tenant Income Certification** (**TIC**) is signed (within 30 days prior to move-in or recertification) by all adult family members (18 years and over) and by management to certify to the tenant's eligibility. However you may have them sign before that time.

- **Compliance Period**

The period of time in which the property must be rent restricted and occupied by qualified low-income tenants.

> **Note:** For properties with BIN numbers 1987 through 1989 the compliance period is 15 years. Properties with 1990 or later have compliance periods of at least 15, but most for 30 or even 50 years. The restrictive covenant for the property defines the term of agreement (compliance period).

** The credit period plus 5 additional years in which the owner must comply with LIHTC program requirements. During these additional 5 years, the owner does not receive tax credits; however, the Program requirements must be followed. (Please also see Extended Use Period.)

- **Credit Period**

The ten-year period during which the owner of rental housing may deduct the tax credits from his/her personal tax liability if the requirements of the program are met. [Reference IRC Section 42(f)]

** The consecutive 10 taxable years in which the credits are received, beginning with the placed in service date or, at the election of the tax payer, the following year.

- **Deep Rent Skewed Project (IRC 142(d)(4)(B)**

If an owner elects to have a project treated as a deep rent skewed project the following requirements must be met:

15% of the low-income units in the project must be rent restricted and occupied by households whose income does not exceed 40% of the are median gross income. The gross rent of each low-income unit in the project must not exceed ½ of the average gross rent of the comparable unrestricted units if there are any. The Available Unit rule defines an over-income unit a Deep Rent Skewed project as a low-income unit in which the aggregate income of the occupants of the unit increases above 170% of the applicable income limitation.

- **Development**

A developed tract of land, for example one with housing on it. Synonymous with complex or project.

- **Due Diligence**

Reasonable effort and persistence to determine the true and accurate income eligibility of a prospective Section 42 resident of family, with respect for, and guided by, the written regulations governing the program.

- **Educational School**

Educational organization is one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where it's educational activities are regularly carried on. 170 (b)(1)(A)ii) An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

- **Elderly Housing**

The Fair Housing Law has stated that there are three types of Elderly housing:

1. Federal or State programs that the Secretary of HUD has recognized as being Elderly so long as the definition of the program is followed. FmHA (RD) (RHS), HUD and PHA Elderly housing programs fall under this category. In these programs the definition of "Elderly" is where the tenant or co-tenant is 62 or older or handicapped/disabled so long as they are of legal age. In these programs, children **are** allowed so long as they are members of the Elderly household. In these properties many disabled or handicapped applicants with or without children have been housed due to this definition. If a Federal Agency or a State government program wishes to create another elderly program that does not follow one of the two remaining choices in the Law, then that definition must receive a waiver from the Secretary of HUD.

2. 62 and older housing – This is the most restrictive type of Elderly housing since every single resident must be 62 or older. In other words if an applicant who was 63 applied with a spouse or household member who was 61, they would be ineligible for this type of housing. Children are not allowed nor are handicapped/disabled or other applicants who are under 62.

3. 55 and older housing – In this type of property it is recognized as Elderly so long as one household member is 55 or older in at least 80% of the units at all times. This could occur where an applicant household consisting of a 57 and a 52 year old applied, the 57 year old later leaves or dies, with the remaining member under 55 certainly allowed to stay. This could also occur so long as no more than 20% of the units were rented to households other than 55 plus. There are two important things to recognize under Fair Housing. The first is that age is not a Fair Housing protection so an owner may limit the age of other household members to, for example, 50 or require that everyone be 55 or that all 100% of the units have at least one 55 year old tenant. In, fact, if you wished to turn 55 plus housing into 60, 62, 65 or another age plus housing it would still meet the requirements of the Law since these ages are obviously over 55. The second item to note is that in 55 plus housing there must be at least one service or amenity that would benefit the elderly. This could be a van for transportation to shopping or doctors, meals programs, specific seniors' activities on a regular basis or other services that would distinguish this property as Elderly housing.

- **Eligible Basis**

Eligible costs associated with the development of a LIHTC building. These eligible costs are multiplied by the applicable fraction (percent of low-income units) for each building to determine the amount of tax credits allocated.

** Eligible basis of a new project is its adjusted basis, generally the eligible development costs minus the cost of land. Eligible basis for acquisition credit is the eligible costs of acquiring a building. Eligible basis for rehab expenditures aggregated over 24 months, which are chargeable to the development's capital account.

- **Extended Use Period**

Owners of developments that received an allocation of credits after 1989 are subject to a Land Use Restriction Covenant (LURA) between the owner and IFA that requires the development to comply with the Program requirements for an extended period of a specified number of years beyond the initial 15 year Compliance Period.

- **Floor Space Fraction**

The total square footage of the residential low-income units divided by the total square footage of all the residential rental units in the building.

- **Full-time Enrollment**

The appropriate number of credit hours as deemed full-time by the individual educational institution for daytime students.

- **Full-time Student**

Full time student is defined as someone who is currently enrolled as a full-time student at a qualified educational institution or anticipates being a full-time student within the next 12 months.

- **Gross rent**

The amount of contract rent paid by the tenant plus the amount of utility allowance for the unit, which when combined cannot be greater than 30 percent of the income allowable for the unit (50% or 60% of area gross median income, depending on the minimum set-aside election adjusted for family size).

For developments allocated prior to 1990, allowable rent is based on the actual number of family members. For developments allocated after 1989, allowable rent is based on the actual number of bedrooms in the unit.

** This ruling allows the owner to establish floor rent amounts that will be effected by fluctuations in the income limits and maximum rent ceilings. In other words, developments will never have to charge gross rents (rents plus utilities) below their gross rent floor amounts. For developments that received an allocation of credits or determination letters on or before October 6, 1994, the owner may elect to establish the gross rent floor as the maximum rents in effect either on the date the development was placed in service or on the date the development received an allocation. This irrevocable election must be made by the owner and submitted in writing to IFA no later than the development's placed in service date. For developments that received an allocation of credits prior to October 6, 1994, the Owner and IFA may use a date based on a reasonable interpretation of the Code.

- **Household/Family**

Any and all persons residing or intending to reside in the Section 42 unit **except** for foster children, foster adults and live-in attendants.

Note: The need for a live-in attendant must be verified by an outside source.

- **Physical Inspection Standards**

Guidelines for determining that apartment units are safe and suitable for occupancy by the Section 8 program, and by state agencies for the LIHTC program.

- **HUD Handbook 4350.3**

Income eligibility for Section 42 residents must be determined in a manner consistent with the requirements for the HUD Section 8 program by applying the information as outlined in Chapter 3 of the HUD Handbook 4350.3; Guidelines for Determining Tenant Eligibility in Multifamily Subsidized Projects.

> **Note:** A complete copy of HUD Handbook 4350.3 may be obtained by writing: HUD Directives Distribution Section, Room B-100, 451 Seventh Street, SW, Washington, DC 20410.

- **Imputed Asset Income**

When the family's net assets exceed $5,000, income from assets is calculated by multiplying the total cash value of the family assets by the current passbook specified by HUD (See HUD 4350.3). Once the imputed income is compared with the actual income from assets, the greater of the two amounts must then be included in the annual gross income for the family.

- **LIHTC Program**

Refers to the Low-Income Housing Tax Credit program (also called the Section 42 program).

- **Live-In Aide**

A person who resides in a unit **only** to provide essential support services that insure the care and well-being of an elderly, disabled, or handicapped tenant and who is not obligated for the financial support of the tenant. The need for such a person must be verified.

- **Manager's Unit**

A non-revenue-producing unit occupied by an employee of the owner, which is used as common use area and not included in the applicable fraction calculation. The manager's unit must be identified at the time of application and/or the first year of the credit period.

> **Note:** As long as the number of previously approved management units are not increased, the owner shall be permitted to move the manager's unit within the project as long as the change is reported on the annual compliance report and the square footage remains the same. If the owner feels the project needs two manager units, but was only approved for one, then the owner will need to get IFA's approval.

- **Minimum Set-Aside**

When application is made for tax credits on a project, the owner establishes that a minimum percent of units in the project will be rent restricted **AND** occupied by (or set-aside for) tenants who meet a certain low-income requirement. The minimum, once elected is locked in and applies throughout the life of the project.

A 40-60 set-aside election requires a minimum of 40 percent of the units in the project to be rented to tenants with gross family incomes less than or equal to 60 percent of the area median gross income, adjusted for family size. Some owners may elect a 20-50 set-aside using the above formula.

> **Example:** An owner of a 200 unit development elected a 40-60 set-aside test. To satisfy the required set-aside, the owner must have rented at least 80 units in the project to tenants whose incomes meet the 60 percent income requirement in order for the owner to claim ANY tax credits for the development that year.

Note: If the minimum set-aside is not met by the end of the first year in which credits are claimed, the owner must forfeit all allocated credits for the life of the project. Also, if the percentage of qualified units ever falls below this minimum, no credits may be claimed until the property again meets the minimum requirement.

- **Mixed Income Development**

A development that in accordance with its occupancy requirements has set-aside low-income households. As a result, mixed income developments have low-income units and unrestricted or market units.

- **Next Available Unit (NAU) 140% Rule**

If at any time after initial certification of low income, it is determined that a qualified household's total gross annual income has increased **over 140**% of the area median income limit, the next available apartment of comparable or smaller size in the **same building** must be rented to another qualified Section 42 resident to avoid reduction in the percent of qualified units. Documentation must be included in the file of the tenant whose income exceeds the 140% limit identifying the next unit leased.

NEXT AVAILABLE UNIT MUST BE RENTED TO LOW-INCOME TENANT IF INCOME RISES ABOVE 140 PERCENT OF INCOME LIMIT. – If the income of the occupants of the unit increase above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to any such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of the area median gross income" for "any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation."

- **Non-employed**

Applicants who are permanently out of the workforce.

- **Non-revocable Trust**

The assets held in trust are **permanently** transferred to someone else and cannot be modified or controlled by any member of the family, therefore are not counted as assets. Only the actual income distribution to the tenant's family from the trust is counted in annual income.

Exception: When an asset is converted to a non-revocable trust and therefore is disposed of for less than fair market value, the tenant must report it as a current asset (as in revocable trust) for a period of two years and, in addition, count the actual income distribution for the asset.

- **Owner's Annual Certification**

Verification provided by the owner to the IFA that the property is in compliance with the requirements of the program. This certification is due March 1 of each year of the compliance period.

- **Placed in Service**

The date on which the property enters the tax credit program. Specific requirements define the placed in service date based on when the property was purchased or construction was completed and/or units were available for occupancy. (References IRS Notice 88-116).

** The date a building is considered for tax purposes to be ready for occupancy, usually when a building receives its certificate of occupancy.

- **Qualified Basis**

An amount related to the development's costs that are used in calculating the amount of tax credits a development is allocated. A development's qualified basis is determined by multiplying the building's eligible basis by its applicable fraction. The qualified basis is determined each year as fluctuations may occur with the applicable fraction.

- **Rent Restricted**

Rent charged to a tenant, which is 30 percent or less of the area median gross income limit designated by the minimum set-aside election established for the project.

> **Note:** Gross rent includes the cost of any utilities (utility allowance) for a unit that are not paid by the owner.

- **Restrictive Covenant**

A land use covenant restricting the use of the property and defining the length the property must be in compliance with the requirements of the Section 42 Code. The restrictive covenant binds the current owner and any future owners to these agreements. All properties with BIN numbers of 1990 and later must have a Land Use Restrictive Covenant filed. [Reference IRC Section 42(h)(6)]

- **Revocable Trust**

Assets held in trust by a grantor but where the trust may be modified by and assets accessed by the tenant or a member of the tenant's family. The cash value of the trust is counted as an asset, and the income generated from the asset (trust) must be included in annual gross income.

Section 42

Internal Revenue Code Section 42 of the Tax Reform Act of 1986 created an income tax credit for private investors as an incentive for them to develop rental housing for people with low income. The Code contains the written IRS regulations for administering the tax credit program. (Reference also 26 CFR 1.42 Final Rule of Monitoring Compliance).

** The section of the Internal Revenue Code that applies to the LIHTC Program.

- **Transfer Rule**

A previously qualified low income tenant who transfers to another unit in another building is treated as a new applicant with all income information obtained and certified as of the new move in date which is the same as the transfer date. The tenant must have income below the allowable tax credit limit on the date of the transfer in order to still be considered a qualified low-income tenant. A previously qualified low income tenant who transfers to another unit in the same building, the status of the unit the household will occupy is transferred to the unit the household vacated.

- **Unearned Income**

Gross amount (before deductions) of payments, receipts, distributions and other assistance, including gifts, regularly received by family members through a source other than employment.

> **Example:** AFDC, child support, trust funds, social security, unemployment, disability or workers' compensation, expenses paid or other support by parents or relatives, relocation assistance, pensions, annuities, and insurance benefits and other similar types of periodic receipts.

> **Note:** Child support paid by a family member, even if by garnishment, is counted as income for the family paying the funds (i.e. the amount of child support garnished is added back into the gross income).

- **Unemployed Applicant**

Applicants who are temporarily out of the workforce who expect to return to work within the next 12 months.

- **Unit Fraction**

The number of residential low-income units divided by the total number of all residential rental units in the building.

- **Unit Vacancy Rule**

Requires that reasonable attempts must be made to rent a vacated Section 42 apartment and that the next available apartment (in the same building) of comparable or smaller size must be rented to a qualified Section 42 resident before renting a market rate unit in the same building.

- **Utility Allowance**

The calculated cost of utilities for a Section 42 apartment (excluding phone and cable) is based on the number of bedrooms in the unit. This calculated amount added to the contract rent the tenant is charged cannot exceed the maximum Section 42 gross rent limit. Depending on the type of unit (i.e. RHS/FmHA, Section 8), the utility allowance must be based on figures supplied by a state or federal agency or the local utility company. There can be a combination of applicable sources within one building.

> **Note**: Utility allowance calculated by paid consultants are not valid unless approved by the applicable utility company.

Utility allowances are maintained on file at the property and **must be reviewed at least annually** and updates as necessary. Since an increase in a utility allowance could increase total Section 42 rent above the maximum limit, once an increase is determined; the amount of rent charged must be adjusted within 90 days of such a change.

> **Note:** Unless the owner is paying 100 percent of the cost of utilities, a calculated allowance as mentioned above will apply to all Section 42 residents and should not be confused with the utility allowance subsidy assigned to those residents holding a Section 8 voucher.

- **Verification/Tenant**

Documentation of **ALL** income, assets and household size and characteristics reported by prospective residents upon application that affect eligibility in the Section 42 program. **This must be completed before the tenant moves into the unit and every 12 months after move in.** Written verification directly from the source must be obtained whenever possible.